

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GREAT NORTHERN STOREHOUSE,)	
INC., d/b/a FROG ROCK CAFÉ, and)	
MOOSEHEAD LIMITED PARTNERSHIP,)	
)	
Plaintiffs)	
)	
v.)	Civil No. 00-7-B
)	
PEERLESS INSURANCE COMPANY and)	
THE NETHERLANDS INSURANCE)	
COMPANY,)	
)	
Defendants)	

**RECOMMENDED DECISION ON PARTIES' CROSS-MOTIONS FOR SUMMARY
JUDGMENT and DEFENDANTS' MOTION TO STRIKE STATEMENTS AND
EXHIBITS FROM PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS**

On January 20, 1999, fire damaged the Frog Rock Café in Greenville, Maine. The Great Northern Storehouse, Inc., d/b/a the Frog Rock Café, and Moosehead Limited Partnership ("Plaintiffs") were the named insureds on a comprehensive business insurance policy underwritten by "Peerless Insurance Member, the Netherlands Insurance Company" that covered the café property and business. Plaintiffs commenced legal action against Peerless Insurance Company and the Netherlands Insurance Company ("Defendants") on January 13, 2000 seeking payment under the policy for their fire losses. Their Amended Complaint (Docket No. 18) asserts four claims against each Defendant. In their Answers (Docket Nos. 35 & 36), Defendants have each filed four identical counterclaims. Jurisdiction is based on diversity. The parties have filed cross motions for summary judgment (Docket Nos. 30 & 32). I now recommend that the Court **GRANT-IN-PART** Plaintiffs' Motion for Summary Judgment (Docket No. 30), **GRANT**

Defendant Peerless Insurance Company's Motion for Summary Judgment, and **DENY** Defendant Netherlands Insurance Company's Motion for partial Summary Judgment on Counts VI and VII (Docket No. 32). I also recommend that Defendants' Motion to Strike (Docket No. 41) be **DISMISSED**.

Summary Judgment Standard

The Court views the record on summary judgment in the light most favorable to the nonmovant. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 50 (1st Cir. 2000). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)). Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Factual Background¹

Great Northern Storehouse ("Great Northern") is a Maine corporation. Plaintiff Moosehead Limited Partnership ("Moosehead") is a Massachusetts limited partnership. As of January 1999, Moosehead owned and Great Northern operated a restaurant named the Frog Rock

¹ This statement of the factual background is culled from the parties competing statements of material fact and their responses to the same. Defendants at one point filed a "motion to strike statements and exhibits from plaintiffs' statement of undisputed facts." (Docket No. 41.) Our local rules do not envision such a motion and I have disregarded it. Local Rule 56 (b)-(e) sets forth in comprehensive detail how to handle statements of material facts. The motion filed by Defendants is redundant if the parties have properly controverted statements of fact or qualified those statements by noting a record citation. The court may disregard any statement of fact not supported by a specific citation to record material. *See* D. Me. Local Rule 56(e).

Café ("the café") in Greenville, Maine. (Docket Nos. 31 & 40, at ¶ 5.) Great Northern and Moosehead were the named insureds on a comprehensive business insurance policy² covering the café and underwritten by "Peerless Insurance Member, the Netherlands Insurance Company." (*Id.* at ¶ 6.) On January 20, 1999, the Frog Rock Café sustained a fire loss. After an investigation, the State Fire Marshall concluded that the fire was intentionally caused with the use of an accelerant. Concerned that the principals of Great Northern and Moosehead intentionally caused the fire, Defendants commenced an extensive investigation. (*Id.* at ¶ 7.) They hired an attorney, a cause and origin expert and a private investigator. Between the date of the fire and November 4, 1999, Defendants took statements from some 11 individuals. (*Id.* at ¶¶ 15-16.) Defendants also investigated the personal finances of the principals of Great Northern and Moosehead. (*Id.* at ¶ 18.) According to the Defendants, this investigation was conducted in an effort to determine what, if any, financial motive the principals may have had to commit insurance fraud.

On March 26, 1999, Great Northern submitted a proof of loss to Peerless for fire loss to the building. (*Id.* at ¶ 13; Exh. 2 to Docket No. 31.) On April 15, Peerless and Netherlands advised Great Northern and Moosehead Limited that they were rejecting the proof of loss, *inter alia*, because the fire was "under investigation." (Docket No. 31, Exh. 7.) On June 4, 1999, Great Northern submitted a proof of loss to Peerless for fire loss to its non-realty, business property. (*Id.*, Exh. 3.) On June 22, Peerless and Netherlands rejected the proof because the fire was still under investigation. (*Id.*, Exh. 8.) On November 23, 1999, Great Northern submitted a proof of loss to Peerless for business interruption. (*Id.*, Exh. 4.) On December 23, 1999, Peerless and Netherlands rejected the proof because the fire was still under investigation. (*Id.*, Exh. 14). On or about December 28, 1999, Peerless and Netherlands informed Great Northern

² The policy can be found at Exh. 5 to Docket No. 31.

and Moosehead that the claim was "still under active investigation." (*Id.* at ¶ 20; Exh. 15.) With the contract's limitations period drawing to a close, Plaintiffs filed the instant action on January 13, 2000.

In a February 2000 interrogatory, Peerless and Netherlands ("Defendants") stated that they had not yet denied Great Northern and Moosehead's ("Plaintiffs") claims. (*Id.*; Exh. 9, at ¶ 1.) On July 11, 2000, Defendants finally sent Plaintiffs a letter denying their claims on the grounds that they had committed arson, "a criminal act excluded under the policy", and that the policy was also void due to the Plaintiffs' "non-cooperation, false swearing, intentional . . . conceal[ment], . . . misrepresentation [of] material facts, and fraudulent conduct as to the circumstances of the fire," in addition to the submission of "intentionally exaggerated claimed amounts in an effort to defraud" (*Id.*; Exh. 16.)

The parties dispute the existence of coverage and whether Defendants' rejection of the claims was reasonable, timely and in good faith. Additionally, with the exception of the building loss, the parties dispute the value of the Plaintiffs' loss.

Discussion

Plaintiffs complaint sets forth eight counts. Counts I through IV are brought against Peerless. Counts V through VIII are brought against Netherlands. These Counts are the same: breach of contract (Counts I and V); bad faith breach of contract (Counts II and VI); unfair settlement practices in violation of 24-A M.R.S.A. § 2436-A (Counts III and VII); and late payment of claim in violation of 24-A M.R.S.A. § 2436 (Counts IV and VIII). Peerless has moved for summary judgment on Counts I through IV on the ground that it is not a party to the insurance contract. Netherlands has moved for partial summary judgment on Counts VI and VII only. Peerless and Netherlands have each brought four counterclaims against Plaintiffs. They

are a declaratory judgment action (Counterclaim I); and claims for "fraudulent insurance acts," 24-A M.R.S.A. § 2186(7) (Counterclaim II); bad faith breach of contract (Counterclaim III); and unfair trade practices (Counterclaim IV). Plaintiffs have moved for summary judgment on all of the counterclaims. I address the Defendants' motions first.

1. Defendants' motions for summary judgment

A. Counts I through IV—all claims against Peerless

In their motion for summary judgment, Defendants argue that summary judgment must be entered in favor of Peerless on Counts I through IV because there is no contract of insurance between Plaintiffs and Peerless. (Defendants' Motion for Summary Judgment, "DMSJ," Docket No. 32, at 2-3.) According to the Defendants, Peerless was merely serving as Netherlands's adjustor on Plaintiffs' claims. (*Id.* at 3.) Plaintiffs respond that the record supports the conclusion that a contract could exist between them and Peerless. ("Plaintiffs' Objection," Docket No. 42, at 2.) They note that the declarations page of the policy carries the letterhead "Peerless Insurance Member, The Netherlands Insurance Companies"; that Peerless advanced funds for clearing debris "as evidence of its good faith"; and that their insurance agent informed them in January 1999 that their policy with "Peerless," previously cancelled, had been reinstated. (*Id.* at 2-3.)

"[I]t is axiomatic that prior to prevailing on a breach of contract claim, the complaint must first establish the existence of a valid contract." *Boise Cascade Corp. v. Reliance Nat'l Indem. Co.*, 99 F. Supp. 2d 87, 100 (D. Me. 2000). Based on my review of the insurance contract at issue in this case, it is clear that no contract of insurance existed between the Plaintiffs and Peerless.³ Therefore, I recommend that the Court **GRANT** summary judgment in favor of

³ Of course, as Netherlands's agent, Peerless's conduct will remain relevant to any determination of Netherlands's liability. *See, e.g., County Forest Prods. v. Green Mt. Agency, Inc.*, 2000 ME 161, ¶ 35, 758 A.2d 59, 68 (affirming

Peerless on Count I of the Plaintiffs' complaint. Additionally, because the other Counts in Plaintiffs' complaint all depend on this contractual relationship, I recommend that the Court **GRANT** summary judgment in favor of Peerless on Counts II through IV.

B. Count V—breach of contract

Netherlands does not move for summary judgment on Count V, nor should it. If there is anything at all clear about this case it is this: Plaintiffs experienced a fire loss within the terms of the policy, but there is an issue of material fact whether an exclusion may pertain or whether the policy has been otherwise voided by the Plaintiffs' actions. The evidence is "sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side." *National Amusements*, 43 F.3d at 735.⁴

C. Count VI—bad faith breach of contract

Netherlands moves for summary judgment on Count VI on the ground that Maine does not recognize a bad faith tort claim arising out of the breach of a contract. (DMSJ at 3.) Plaintiffs respond that their bad faith claim is not a tort claim, but arises out of the implied covenant of good faith and fair dealing, which is a cognizable claim in Maine. (Plaintiffs' Objection at 5-6.) According to Plaintiffs, Defendants have breached the implied covenant of

trial court's finding that insurer breached implied covenant of good faith and fair dealing based on the actions of the insurer's agent in adjusting insured's claim).

⁴ An issue remains as to what standard of proof Defendants will need to meet at trial in order to establish fraudulent or criminal conduct on the Plaintiffs' part. *Compare American Universal Ins. Co. v. Falzone*, 644 F.2d 65, 67 (1st Cir. 1981) (approving without comment trial court's use of clear and convincing standard based on Maine law where defendant insurance company sought to prove plaintiff insured committed arson); *Strout v. Lewis*, 104 Me. 65, 68, 71 A. 137, 138 (1908) ("[T]he law is well settled that to enable a court in equity to exercise [its] power [to reform a contract], proof of the fraud must be full, clear and decisive . . ."); *Decker v. Somerset Mut. Ins. Co.*, 66 Me. 406, 407 (1877) (affirming application of heightened standard to insurer's attempt to prove insured committed arson: "To fasten upon a man a very heinous or repulsive act requires stronger proof than to fasten upon him an indifferent act . . ."); *with Defeo v. Hanover Ins. Co.*, No. 99-303-P-C, 2000 WL 761801 (D. Me. Apr. 10, 2000) (opining that the Maine Supreme Judicial Court abrogated the use of heightened standards in civil cases in *Petit v. Key Bank of Maine*, 688 A.2d 427 (Me. 1996)). See also *Marquis v. Farm Family Mut. Ins. Co.*, 628 A.2d 644, 647 (Me. 1993), wherein the Law Court quotes without comment from a verdict form which employed the preponderance of the evidence standard on this issue. Resolution of this question is not required by the pending motions.

good faith and fair dealing by "misrepresenting their position, pretending to adjust the claim while planning to deny it, by failing to undertake a reasonable investigation and by employing tactics of deliberate delay." (*Id.* at 7.)

Maine recognizes a claim for breach of the covenant of good faith and fair dealing implicit in every contract of insurance. *See, e.g., County Forest Prods. v. Green Mt. Agency, Inc.*, 2000 ME 161, ¶ 35, 758 A.2d 59, 68 (affirming trial court's finding that insurer breached implied covenant of good faith and fair dealing based on the actions of the insurer's agent in adjusting insured's claim). Construing the facts in the light most favorable to Plaintiffs, I conclude that a rational factfinder could find that the 18-month investigation conducted by Netherlands and Peerless was so excessive that it breached the implied covenant of good faith and fair dealing. The allegations concerning the breach of the covenant of good faith and fair dealing might well have been contained within the breach of contract count as was done in *County Forest Products*, but by pleading the alleged breach in this fashion, Plaintiffs have not attempted to allege a tort and the Defendants are not entitled to have the count dismissed. Therefore, I recommend that the Court **DENY** the Defendants' motion with respect to Count VI.

D. Count VII—unfair claims settlement practices (24-A M.R.S.A. § 2436-A)

Netherlands moves for summary judgment on Count VII on the ground that it "had reasonable [sic] basis for denying the Plaintiffs [sic] claim [because they] relied on the advice of experts[,] including cause and origin experts, forensic accountants and legal counsel." (DMSJ at 4.) Defendants contend that the time they took to conduct their investigations was reasonable under the circumstances based on the suspicious origin of the fire and the existence of facts suggesting that Plaintiffs had the opportunity and the financial motive to commit insurance fraud. (DMSJ at 4-8.) Plaintiffs argue that there is "at least" a genuine issue of fact as to whether

Defendants failed to acknowledge and review their claim within a reasonable time; failed to affirm or deny coverage within a reasonable time; and failed to promptly and fairly settle their claims for which, they contend, liability was reasonably clear. (Plaintiffs' Objection at 8.) Specifically, Plaintiffs contend that Defendants violated the provisions of Section 2436-A by waiting 18 months to settle the claim when they had "everything they needed" within months of the fire; by not investigating leads that might have shown Plaintiffs were not responsible for causing the fire; and by not informing Plaintiffs whether their claims would be covered until the Plaintiffs commenced this suit. (*Id.* at 9.)

Reasonableness determinations are, in essence, factual determinations. Although the Defendants' justifications for their late denial of Plaintiffs' claims may appeal to the factfinder, I cannot say that these justifications insulate them from liability on this claim as a matter of law. For instance, should the factfinder conclude that Netherlands cannot prove Plaintiffs' culpability for the fire, it may also conclude that Netherlands had no good faith basis for refusing to indemnify Plaintiffs. For this reason, I recommend that the Court DENY Defendants' motion as to Count VII against Netherlands.

2. Plaintiffs' motion for summary judgment

Plaintiffs move for summary judgment on Defendants' counterclaims. They argue that each counterclaim is based on allegations of fraud and that the Defendants have not pleaded fraud with any particularity. Therefore, they argue that Defendants cannot maintain any of their counterclaims. (Plaintiffs' Motion for Summary Judgment, "PMSJ," Docket No. 30, at 14-16.) Additionally, Plaintiffs note that Defendants' unfair trade practice claim must be dismissed for failure to state a claim.

I agree that each of Defendants' counterclaims is grounded in allegations of fraud. However, paragraphs 9-13 of the Defendants' Counterclaims sufficiently specify the particulars of the fraud allegations and paragraph 24 of the Defendants' Statement of Disputed Material Facts generates an issue of material fact concerning the origin of the fire and the extent of the Plaintiffs' loss. (Docket No. 40, at ¶ 24, incorporating ¶¶ 4 & 14 of Docket No. 33.) For this reason, I reject Plaintiffs' Rule 9(b) attack on Defendants' counterclaims. Nevertheless, as discussed below, I recommend that the Court **GRANT** Plaintiffs' motion and dismiss all of Peerless's Counterclaims as well as Netherlands's Counts III and IV.

A. Peerless's counterclaims

Because I have concluded that there is no contract of insurance between Plaintiffs and Peerless, I recommend that the Court **GRANT** Plaintiffs' motion with respect to Peerless's counterclaims. Because Peerless's involvement in this suit stems from acts performed as an agent of Netherlands, it does not possess the necessary relationship with the Plaintiffs to maintain claims for a declaratory judgment (no contract), fraud (no duty or reliance), or bad faith breach (no contract). Additionally, as discussed in more detail below, even if Peerless were Plaintiffs' insurer, Peerless could not maintain a claim against its insureds for unfair trade practices.

B. Counterclaim I—Netherlands's counterclaim for declaratory judgment

Because there is a genuine issue of material fact regarding facts which, if taken in a light most favorable to Netherlands, could trigger an exception to coverage or otherwise void the policy, I recommend that the Court **DENY** Plaintiffs' motion with respect to this counterclaim. If Netherlands can prove its case, it is entitled to a judgment declaring that no payments are due under the contract of insurance. Of course, proof of this claim is simply a corollary to disproof

of Plaintiffs' count for breach of contract. As discussed in footnote 4, *supra*, the burden of proof on this claim has yet to be determined.

C. Count II—Netherlands's counterclaim for fraudulent insurance acts

Pursuant to 24-A M.R.S.A. § 2186(7):

In a civil action in which it is proven that a person committed a fraudulent insurance act, the court may award reasonable attorney's fees and costs to the insurer. In a civil action in which the insurer alleges that a party committed a fraudulent insurance act that is not established at trial, the court may award reasonable attorney's fees and costs to the party if the allegation is not supported by any reasonable basis of law or fact.

Plaintiffs' claim is statutorily authorized and adequately plead. Therefore, I recommend that the Court **DENY** Plaintiffs' motion with respect to this counterclaim.

D. Count III—Netherlands's counterclaim for bad faith breach

I consider Netherlands to have "mistakenly designated a defense as a counterclaim." FED. R. CIV. P. 8(c). If Netherlands succeeds in proving arson or fraud, the proper remedy is a declaratory judgment absolving Netherlands of any duty to pay and attorney's fees and costs pursuant to 24-A M.R.S.A. § 2186(7). Therefore, I recommend that the Court **GRANT** Plaintiffs' motion with respect to this claim.

E. Count IV—Netherlands's counterclaim for unfair trade practices

Unlike in Massachusetts, there simply is no rational basis for an insurer to bring a claim against an insured for "unfair business practice" in the State of Maine. *Compare* 5 M.R.S.A. § 213 (Pamph. 2000) (limiting private actions to consumers of personal, family or household goods, services or property) *with* Mass. Gen. Laws ch. 93-A, § 11 (authorizing private actions by "[a]ny person who engages in the conduct of any trade or commerce and who suffers any loss of money or property"). Therefore, I recommend that the Court **GRANT** Plaintiffs' motion against Netherlands's statutory claim for unfair trade practices.

F. Count VIII of Plaintiffs' Complaint—Plaintiffs' claim for late payment (24-A M.R.S.A. § 2436)

In addition to moving against Defendants' counterclaims, Plaintiffs move for partial summary judgment in their favor on their own Count VIII. Netherlands's motion for partial summary judgment does not challenge this Count. Plaintiffs argue that "should [they] prevail on the coverage issue, they are entitled to this Court's Order that [they] are also entitled to statutory interest and attorney fees under the late payment of claims statute, 24-A M.R.S.A. § 2436." (PMSJ at 18.) Defendants have not addressed this argument, although it is clear from their own motion for summary judgment that they consider Plaintiffs' claim to be disputed and, therefore, not due. (Defendants' Opposition at 8.)

Pursuant to 24-A M.R.S.A. § 2436, there are two kinds of insurance claims: disputed and undisputed. Subsection 1 of the statute concerns undisputed claims. It provides that an insurer must pay an undisputed claim or request "reasonable additional information" within 30 days of receiving the insured's proof of loss or the claim will be deemed "overdue." If the insurer requests additional information in writing and the policy insures against fire loss, the claim will not be overdue until 60 days from the receipt of such additional information. *See id.*

Subsection 2 concerns disputed claims. It provides:

An insurer may dispute a claim by furnishing . . . a written statement that the claim is disputed with a statement of the grounds upon which it is disputed. The statement must be based upon a reasonable investigation of the claim and must include sufficient detail to permit the insured or beneficiary to understand and respond to the insurer's position. . . .

Id. § 2436(2). Pursuant to Section 2436(3), an insured may recover interest on an overdue, *undisputed* claim at the rate of one and one-half percent monthly. Pursuant to Section 2436(4),

an insured may also recover a "reasonable attorney's fee" on an "overdue claim".⁵ *Id.* § 2436(3) & (4). Plaintiffs contend that they provided all of the additional information requested by the Defendants, but that Defendants did not deny coverage until July 11, 2000, and never provided the appropriate written statements that the claims were disputed in response to Plaintiffs' proof of loss statements.

Plaintiffs argue that if they succeed at trial the claim is "overdue." This is so, according to Plaintiffs, because Defendants never properly disputed their claim with a written statement giving sufficient detail to permit them "to understand and respond to the insurer's position." With respect to the factual component of this argument, the record is, in effect, stipulated. It consists of exhibits 7, 8 and 14 to Plaintiffs' Statement of Material Facts, Docket No. 31. In these letters, sent in response to each of Plaintiffs' proofs of loss, defense counsel "rejects" the relevant proof of loss for "failure to comply with 24-A M.R.S.A. § 3002 and the insurance contract," for "presupposing the existence of coverage," and because Defendants' investigation was still ongoing. Defendants do not generate any factual dispute on the issue of whether they received all of the additional required information requested from the insureds. Indeed, they do not directly address this issue at all in their various memoranda. In the final responsive letter to Plaintiffs dated December 23, 1999, (PSMF, Exh. 14), Defendants suggest that all examinations under oath have been completed and all documents received, although they were not received "until recently." Plaintiffs maintain that if Defendants chose to dispute the *amount* claimed in the proofs of loss, they had 60 days from the November 1999, date when all information was provided to them to do so. They argue that, as a matter of law, Defendants failure to do so

⁵ There is some confusion generated by the word choice reflected in subsection 4. Unlike subsection 3, subsection 4 refers to "overdue claim" without reference to whether the claim is disputed or undisputed. However, in subsection 3, after referring to what is clearly an undisputed overdue claim, the language refers to the same claim as an "overdue claim." Based on this substitution, I am confident that subsection 4 is addressed to the same type of claim as subsection 3, *i.e.*, an overdue, undisputed claim.

renders each of their claims undisputed under the statute even though they had ample notice that Defendants would in all probability deny coverage under the policy.

In my view, this issue only becomes an issue if Plaintiffs not only succeed with their breach of contract claim, but also fail to succeed on their claim for unfair settlement practices, which would provide identical relief. The Law Court, when characterizing the provision under Subsection 1, has considered it "penal in nature" and requires that it be strictly construed. *See Marquis v. Farm Family Mut. Ins. Co*, 628 A.2d 644, 651 (Me. 1993). In *Marquis*, the plaintiff did not recover under the provision because he had delayed the requested examination under oath until after criminal charges brought against him were resolved and therefore was not entitled to avail himself of the statutory interest and fees. In this case, Plaintiffs apparently provided all information requested. Because Defendants chose not to formally deny coverage until July, 2000 and never told Plaintiffs pursuant to § 2436(2) exactly what in the proofs of loss was disputed, the statutory provision may apply *if* Plaintiffs prevail on their breach of contract claim. However, because this Court would be entering an Order on a state statutory provision that may never be applicable to the facts of this case, I recommend that the Court not provide Plaintiffs with the order they seek at this time and only enter an order if appropriate after full development of the record at trial.

Conclusion

Based on the foregoing discussion, I recommend that this case proceed to trial on Plaintiffs' Counts V through VIII and Netherlands's Counts I and II. Accordingly, I recommend that the Court:

GRANT Plaintiffs' motion for summary judgment **IN PART** and dismiss Peerless's Counterclaims I through IV and Netherlands's Ccounterclaims III and IV;

GRANT Peerless's motion for summary judgment and dismiss Plaintiffs' Counts I through IV; and

DENY, Netherlands's motion for summary judgment. I also recommend that Defendants' Motion to Strike be **DISMISSED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated: December 29, 2000

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-7

GREAT NORTHERN STORE, et al v. PEERLESS INSURANCE, et al Filed: 01/13/00
Assigned to: JUDGE D. BROCK HORNBY Jury demand: Both
Demand: \$0,000 Nature of Suit: 110
Lead Docket: None Jurisdiction: Diversity
Dkt# in other court: None

Cause: 28:1332 Diversity-Insurance Contract

GREAT NORTHERN STOREHOUSE, INC TYLER N. KOLLE, ESQ.
dba 784-3586
FROG ROCK CAFE [COR LD NTC]
plaintiff BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
784-3576

v.

PEERLESS INSURANCE, CO.
defendant

DANIEL A. PILEGGI, ESQ.
942-4644
JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
23 WATER ST.
BANGOR, ME 04401
207-942-4644

MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.
LECOMTE, EMANUELSON, MOTEJUNAS
& DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900

PEERLESS INSURANCE, CO.
counter-claimant

DANIEL A. PILEGGI, ESQ.
942-4644
JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
23 WATER ST.
BANGOR, ME 04401
207-942-4644
MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.
LECOMTE, EMANUELSON, MOTEJUNAS
& DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900

v.

GREAT NORTHERN STOREHOUSE, INC
dba
FROG ROCK CAFE
counter-defendant

TYLER N. KOLLE, ESQ.
784-3586
[COR LD NTC]
BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
784-3576

NETHERLANDS INSURANCE COMPANY
defendant

DANIEL A. PILEGGI, ESQ.
942-4644
JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
23 WATER ST.
BANGOR, ME 04401
207-942-4644

MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.

LECOMTE, EMANUELSON, MOTEJUNAS
& DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900

MOOSEHEAD LTD PARTNERSHIP
plaintiff

TYLER N. KOLLE, ESQ.
784-3586
BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
784-3576

NETHERLANDS INSURANCE COMPANY
counter-claimant

DANIEL A. PILEGGI, ESQ.
942-4644
JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
23 WATER ST.
BANGOR, ME 04401
207-942-4644

MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.
LECOMTE, EMANUELSON, MOTEJUNAS
& DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900

v.

GREAT NORTHERN STOREHOUSE, INC
dba
FROG ROCK CAFE
counter-defendant

TYLER N. KOLLE, ESQ.
784-3586
[COR LD NTC]
BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
784-3576

MOOSEHEAD LTD PARTNERSHIP
counter-defendant

TYLER N. KOLLE, ESQ.
(See above)

PEERLESS INSURANCE, CO.
counter-claimant

DANIEL A. PILEGGI, ESQ.
942-4644
JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
23 WATER ST.
BANGOR, ME 04401
207-942-4644

MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.

LECOMTE, EMANUELSON, MOTEJUNAS
& DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900

v.

GREAT NORTHERN STOREHOUSE, INC
dba
FROG ROCK CAFE
counter-defendant

TYLER N. KOLLE, ESQ.
784-3586
[COR LD NTC]
BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
784-3576

MOOSEHEAD LTD PARTNERSHIP
counter-defendant

TYLER N. KOLLE, ESQ.
(See above)