

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-CV-03577

Lincoln-Marti Community Agency, Inc. v. Alliance of Nonprofits For Insurance Risk Retention Group, Inc.
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ENTRY REGARDING MOTION

Title: Motion to Amend Answer to Add Counterclaim (Motion: 2)
Filer: Matthew A. Ferrigno
Filed Date: April 29, 2026

The motion is GRANTED.

This is a bad faith insurance dispute brought by insured Plaintiff Lincoln-Marti Community Agency, Inc. (Lincoln-Marti) against its Vermont-chartered insurer Defendant Alliance of Nonprofits for Insurance Risk Retention Group, Inc. (Alliance). Alliance has filed a motion to amend the answer to assert a counterclaim based on Lincoln-Marti's alleged post-loss noncooperation and misrepresentations that led to the rejection of a \$3,000,000 settlement offer in the underlying tort suit in Florida only to be followed shortly thereafter by the acceptance of a \$5,000,000 settlement offer exceeding applicable policy limits. Lincoln-Marti opposes amendment, principally arguing that the interest in comity with the Florida court where related litigation is underway counsels against it.

1. Procedural standard

Rule 15(a) provides that leave to amend a complaint shall be freely given by the court "when justice so requires." In Vermont, this provision has been liberally construed in favor of allowing parties to amend their pleadings. *Lillicrap v. Martin*, 156 Vt. 165, 170 (1991). "The principal reasons underlying the liberal amendment policy are (1) to provide maximum opportunity for each claim to be decided on its merits rather than on a procedural technicality, (2) to give notice of the nature of the claim or defense, and (3) to enable a party to assert matters that were overlooked or unknown to him at an earlier stage in the proceedings." *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4, 184 Vt. 15 (citation omitted).

Leave to amend is not always granted, however. It may be denied when the just and

expeditious disposition of the dispute between the parties will not be advanced via the amendment. In making that determination, the court analyzes whether the proposed amendment: (1) would result in undue delay; (2) is brought in bad faith; (3) would result in unfair prejudice to the opposing party; or (4) would be “futile” in that it would fail to state a claim upon which relief can be granted. *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313 (1982).

These standards apply to the amendment of an answer the same as they would to any other pleading. See V.R.C.P. 13(f); *Stratton v. Steele*, 144 Vt. 31, 33–34 (1984) (“There is no indication that V.R.C.P. 15(a) applies to less than all the amendments provided for in the Civil Rules. While V.R.C.P. 13(f) provides specific instances in which leave to amend may be granted, it does not create a stricter standard than that embodied in V.R.C.P. 15(a).”); F.R.C.P. 13—Advisory Committee Notes—2009 Amendment (amending the analogous federal rule to avoid confusion over this matter).

2. Background

Lincoln-Marti operates day care centers for children in Florida. Shortly after Alliance insured it, with a combined liability limit of \$3,000,000, a child in its care died. The parents sued it almost immediately (within days of the child’s death) and extended an offer to settle for \$3,000,000 that would be withdrawn if not accepted within 30 days. Between defense counsel appointed by Alliance and Alliance, the offer was not accepted, and the Plaintiffs withdrew it. As the facts (quickly, apparently) unfolded, shortly thereafter Alliance and Lincoln-Marti accepted an aggregate \$5,000,000 settlement, with Alliance paying out its coverage limits and leaving Lincoln-Marti responsible for the excess \$2,000,000.

Lincoln-Marti then filed a professional negligence suit in Florida state court against its Alliance-appointed defense counsel. It then amended the complaint to bring in Alliance, asserting bad faith in failing to accept the original settlement offer. Once in the case, Alliance filed a counterclaim asserting that Lincoln-Marti extensively misrepresented its risk profile before Alliance accepted its application for insurance (the pre-loss counterclaim), which it presumably would not have done otherwise.

Alliance then filed a motion to dismiss Lincoln-Marti’s bad faith claim for lack of subject matter jurisdiction (for reasons unnecessary to this decision). The argument persuaded the

Florida court, which granted the motion. As between Lincoln-Marti and Alliance, that left Alliance's pre-loss counterclaim in the Florida suit.

Lincoln-Marti then refiled its bad faith claim against Alliance in this court (curing the basis for the Florida court's dismissal decision). Alliance now has filed the pending motion to amend to assert a counterclaim arising out of Lincoln-Marti's alleged post-loss conduct, which is based on misrepresentations and noncooperation that ostensibly led Alliance and appointed defense counsel to not fully grasp the potential for liability or its extent in the underlying tort suit within the abbreviated 30-day timeframe during which the original settlement offer was on the table (the post-loss counterclaim). The evidence material to the post-loss counterclaim can be reasonably expected to overlap entirely with one of Alliance's affirmative defenses in this case. Alliance had never asserted the post-loss counterclaim in the Florida suit.

3. Analysis

Alliance argues that, while it had its suspicions, the evidence developed in discovery in the Florida suit accounts for the timing of its amendment motion here, and that there has been no undue delay insofar as timing goes. It further argues that there is no bad faith, unfair prejudice, or futility that might warrant denying its motion. Lincoln-Marti, while not squarely contesting those issues, argues that if Alliance seeks to bring a post-loss counterclaim against it, it should be required to do so in the earlier filed Florida suit. It argues that the interest in comity and avoiding duplicative litigation and improper claim-splitting supports that outcome. In the unusual circumstances of this case, the court is not persuaded by Lincoln-Marti's counterarguments.

Comity, duplicative litigation, and claim-splitting are various ways of describing the same thing in this case: there is an earlier filed Florida suit addressing the same general subject matter in which Alliance could have brought its post-loss counterclaim and, arguably, Alliance should be required to do that there rather than here.

Although the circumstances often will counsel otherwise, "[a] state may entertain an action even though an action on the same claim is pending in another state." Restatement (Second) of Conflict of Laws § 86. By contrast, the Vermont Supreme Court recently described the interest in state-to-state judicial comity, in the sense applicable here, as follows:

Comity principles may apply when multiple courts have jurisdiction over the same dispute. The doctrine “teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter.” Under this doctrine, courts have discretion to stay or dismiss a proceeding if “an action concerning the same parties and the same subject matter has been commenced in another jurisdiction capable of granting prompt and complete justice.” We have explained that comity “is designed to foster cooperation among the states, preclude forum shopping, avoid multiple or inconsistent judgments, and promote judicial economy.”

Nijensohn v. Ring, 2022 VT 16, ¶ 13, 216 Vt. 329 (citations omitted). “Our case law is clear that ‘[c]omity is not a rule of law, but one of practice, convenience, and expediency.’ As such, applying comity principles requires the exercise of judicial discretion.” *Id.* ¶ 15.

In the circumstances here, there is no way to avoid two suits. The pre-loss counterclaim is underway in Florida, and Lincoln-Marti (due to the Florida dismissal) refiled its bad faith claim in Vermont. Lincoln-Marti’s bad faith claim necessarily is based on the parties’ post-loss conduct. So is Alliance’s proposed post-loss counterclaim. While the pre-loss and post-loss counterclaims no doubt arising out of the same tort claim and insurance policy context, the operative facts that will or will not lead to liability differ due to their separate chronologies. This is the case where the post-loss facts are most central.

Convenience and expediency strongly counsel in favor of granting amendment rather than deferring to the Florida litigation. Presumably, were the court to deny amendment, Alliance would seek to bring its post-loss counterclaim in Florida. If the Florida court permitted that, the parties would, in effect, be forced to fight the same battle on two fronts or this case might be stayed to avoid that, leading to delay without any apparent gain for anyone.

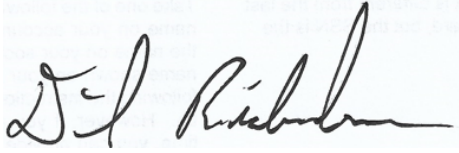
The court declines to exercise its discretion out of an interest in comity to deny amendment or stay this case in deference to the Florida court’s jurisdiction over the litigation there. There is no indication in the record that Alliance brought its post-loss counterclaim here as a result of forum shopping or harassment, nor is there any perceptible prejudice to Lincoln-Marti.

The interests in avoiding duplicative litigation and claim-splitting are subject to the same considerations. Here, there is no way to avoid two suits. Convenience and expediency favor allowing Alliance to pursue its post-loss counterclaim in this suit.

ORDER

For the foregoing reasons, Alliance's motion to amend is **Granted**. Plaintiff shall have 21 days from the date of this Order to file an answer or dispositive motion to Defendant's amended counterclaims, which have been permitted with this Order.

Electronically signed on 7/27/2026 12:56 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is fluid and cursive.

Daniel Richardson
Superior Court Judge