UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

-against-

TRATAROS CONSTRUCTION, INC.,

Defendant.

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RUTH CAMPOS, ELAINE MARTINEZ, EDITH CENOSTIN,

Plaintiffs-Intervenors,

-against-

TRATAROS CONSTRUCTION, INC.,

Defendant.

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TRATAROS CONSTRUCTION, INC.,

Third-Party Plaintiff,

-against-

ADMIRAL INSURANCE COMPANY,

Third-Party Defendant

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MEMORANDUM & ORDER

01-CV-5127 (RJD)

DEARIE, District Judge.

On August 2, 2001, the EEOC commenced this action against defendant, Trataros Construction, Inc., claiming that Trataros violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. by discriminating against three female workers based on sex and by retaliating against them for complaining about this discrimination. The three complaining employees (the "Intervening-Plaintiffs") intervened in the action against Trataros on September 14, 2001. On December 9, 2002, Trataros commenced a third party action against its insurer, Admiral Insurance Company, seeking a declaration that Admiral is obligated to defend and

indemnify Trataros in the underlying EEOC action. On January 23, 2003, the Intervening-Plaintiffs amended their complaint to include a direct action against Admiral. They seek a declaration that if Trataros is found liable to the individual plaintiffs, the plaintiffs are entitled to recover against Admiral. The Intervening-Plaintiffs further seek a declaration that in disclaiming coverage, Admiral violated the terms of the policy and the rights of the Intervening-Plaintiffs.

There are a number of motions before the Court. First, Admiral seeks summary judgment against Trataros pursuant to Rule 56 of the Federal Rules of Civil Procedure, arguing that it has no duty to defend and indemnify Trataros because Trataros failed to give timely notice of the underlying claims. Trataros cross-moves for summary judgment, maintaining that it did indeed give timely notice. Second, Admiral moves to dismiss the Intervenor-Plaintiffs' complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, Admiral seeks summary judgment. Admiral contends that the Intervening-Plaintiffs do not have standing to assert direct claims against Admiral because they have not yet obtained a judgment in the underlying action against Trataros. The Intervening-Plaintiffs cross-move for summary judgment against Admiral.

For the reasons that follow, Admiral's summary judgment motion against Trataros is denied and Trataros' cross motion is granted. Furthermore, Admiral's motion to dismiss the Intervening-Plaintiffs' complaint is granted, and the Intervening-Plaintiffs' summary judgment motion is denied as moot.

BACKGROUND

A. Underlying EEOC Action Against Trataros

On or about May 19, 2000, three former employees of defendant Trataros, Ruth Campos,

Elaine Martinez, and Edith Cenostin, filed charges of sex discrimination and retaliation against Trataros with the EEOC. See EEOC filings, Exhibit F annexed to Wolmetz Declaration. On June 2, 2000, the EEOC sent Trataros a "Notice of Charges of Discrimination," informing Trataros of the Intervening-Plaintiffs' complaints.[1] See id. The EEOC also requested information from Trataros relating to the allegations. See id. The EEOC investigated the complaints, and on or about May 22, 2001 it issued a Determination Letter finding that there was reasonable cause to support the charges against Trataros. See Exhibit G attached to the Wolmetz Declaration. The EEOC recommended resolving the dispute by conciliation, but Trataros declined. See id.

On August 2, 2001, the EEOC commenced this suit against Trataros. See Third Party Complaint ¶ 4, Exhibit A attached to Wolmetz Declaration. On September 14, 2001, the Court granted Ruth Campos, Elaine Martinez, and Edith Cenostin's motion to intervene. See id. ¶ 5.

B. The Admiral Policy

At all times relevant to this lawsuit, Trataros carried a "claims made" Employment Practices Liability Insurance policy issued by Admiral. The initial policy provided coverage for the period October 1, 1999 through October 1, 2000, and the renewal policy covered Trataros from October 1, 2000 through October 1, 2001. See Exhibit E attached to Wolmetz Declaration. The policies contain identical terms and provisions. As a condition precedent to coverage, both policies require the insured to give notice to the insurer of all claims "as soon as practicable, but

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[1] The EEOC sent Trataros three separate Notices of Charges of Discrimination for each of the Intervening-Plaintiffs. Hereinafter, all three Notices of Charges will be referred to as the "Notice of Charges." The Court further notes that the Notice of Charges incorporates all three of the Intervening-Plaintiffs' complaints.

in no event later than 90 days after such Claim is first made." Exhibit C attached to the Wolmetz Declaration, at 5.

On June 11, 2001, Trataros notified Admiral of the June 2000 Notice of Charges and the EEOC's May 22, 2001 Determination Letter. See Exhibit I attached to Wolmetz Declaration. Admiral's agent, Monitor Liability Managers Inc. ("Monitor"), initially reserved all of Admiral's rights concerning coverage for the claims. See Exhibits K & L, attached to Wolmetz Declaration. Monitor explained that at that point, it could neither confirm coverage nor consent to a settlement "due to a lack of information and the late notice." See Exhibit L attached to Wolmetz Declaration. On June 25, 2001, Monitor officially denied coverage on the grounds of late notice. Monitor asserted that the EEOC Notice of Charge was a claim under the policy, and thus Trataros was obligated to notify Admiral no later than September 2, 2000, ninety days after Trataros received the Notice of Charges. Because Trataros did not give notice until June 2001, almost one year after it initially received the Notice of Charges, Monitor denied coverage. See Exhibit M attached to the Wolmetz Declaration.

In August 2001, Trataros made yet another attempt to secure coverage from Admiral. Trataros maintained that the Notice of Charges was not a claim under the policy but asserted that in any event it had promptly informed Admiral. See Exhibits N and O, attached to Wolmetz Declaration. In response, Monitor noted that there was no evidence to support Trataros' counsel's assertion that Trataros gave timely notice. Furthermore, Monitor disagreed with Trataros' contention that the Notice of Charges was not a claim, and it once again disclaimed coverage on the grounds of late notice. See Exhibit Q attached to the Wolmetz Declaration.

In November 2001, Trataros served its Initial Rule 26 Disclosures in the underlying

EEOC action. In response to the directive requiring Trataros to disclose any insurance agreement under which an insurance carrier may be liable to satisfy a judgment, Trataros' counsel responded "N/A", not applicable. See Rule 26 Disclosures, Exhibit 1 attached to Bellman Declaration. At a pre-motion conference held before this Court in October 2002, however, Trataros' counsel advised the Court that the company had an insurance policy that applied to the Intervening-Plaintiffs' claims, but the carrier had denied coverage. Counsel further informed the Court that as of the conference date, Trataros was virtually insolvent. See Bellman Declaration ¶ 8.

The Intervening-Plaintiffs maintain that the October 2002 conference was the first time that they learned of the Admiral policy. In November 2002, Trataros' counsel sent the Intervening-Plaintiffs copies of the Admiral policy and Monitor's June 25, 2001 letter denying coverage. Id. ¶ 9-11. Counsel for the Intervening-Plaintiffs then submitted a letter to Admiral, through its agent Monitor, formally advising Admiral of the plaintiffs' claims and demanding that Admiral provide coverage for the claims. By letter dated November 18, 2002, Monitor informed both Trataros and the Intervening-Plaintiffs that it stood by its decision to deny coverage on the grounds of late notice. See Exhibit 3, attached to the Bellman Declaration.

Trataros subsequently commenced the third party action against Admiral, seeking a declaration that Admiral is obligated to defend and indemnify it in the underlying EEOC action. See Third Party Complaint ¶¶ 14-16, Exhibit A attached to the Wolmetz Declaration. At the same time, the Intervening-Plaintiffs amended their complaint to include a direct action against Admiral as Trataros' insurer. The Intervening-Plaintiffs seek a declaration that if Trataros is

found liable to the Intervening-Plaintiffs, they are entitled to recover against Admiral. See First Amended Intervention Complaint ¶ 112.

DISCUSSION

A. Trataros v. Admiral Summary Judgment Motion

1. Summary Judgment Standard

A party moving for summary judgment is entitled to judgment as a matter of law if "the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits. . . show that there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c). The burden to show that no genuine issue of material fact exists lies with the moving party, with all ambiguities resolved and all inferences drawn in favor of the non-moving party. Gallo v. Prudential Residential Servs. Ltd., 22 F.3d 1219, 1223 (2d Cir. 1994). When the evidence is such that no rational juror could find in favor of the non-moving party, the Court should grant summary judgment. Id. at 1224.

2. Whether the EEOC Notice of Charges Was a Claim Under the Policy

In order to determine whether Trataros gave timely notice of the underlying EEOC action, the Court must determine when the "claim" was first made. If, as Admiral contends, the EEOC Notice of Charges is a claim under the policy, then Trataros gave untimely notice and Admiral is entitled to summary judgment.

Under the Admiral policy, a "claim" is defined as : "1) [a] written demand or assertion for monetary or non-monetary relief, or 2) a civil, criminal, administrative or arbitration proceeding for monetary or non-monetary relief which is commenced by: a) service of complaint or similar pleading, or b) return of an indictment . . . or c) receipt or filing of a notice of charges."

See Policy at 1, Exhibit C attached to Wolmetz Declaration.

In support of its argument that the Notice of Charges constitutes a claim, Admiral relies heavily on Specialty Food Systems, Inc. v. Reliance Insurance Company of Illinois, 45 F. Supp.2d 541 (E.D. La. 1999), in which the Louisiana district court addressed whether an EEOC Notice of Charges constituted a "claim." The Specialty Foods policy defined claim as "any written demand or notice received by an Insured from a person or from any administrative agency advising that it is the intention of a person to hold the Insured responsible for the consequences of a Wrongful Employment Practice and includes any demand received by an Insured for damages and/or service of suit." Id. at 543. The court held that the EEOC Notice of Charges was a claim under the policy, even though the notice did not include a demand. The Court agrees that the EEOC Notice of Charges fits squarely within the Specialty Foods policy's definition of claim. Importantly, however, the definition of claim in the Specialty Foods policy differs significantly from the definition of claim set forth in the Admiral policy.

Unlike the Admiral policy, the policy in Specialty Foods explicitly defines claim to include notices which merely inform the company of a person's intention to hold the company responsible for wrongful employment practices; a claim need not demand relief. In contrast, the Admiral policy specifically limits its definition of claim to demands or proceedings which seek monetary or non-monetary relief. Therefore, the analysis in Specialty Foods is inapposite.

Because a claim under the Admiral policy must be a request for relief, in order to determine whether the EEOC Notice of Charges is a claim, the Court must decide whether the

Notice of Charges initiated an administrative proceeding for relief.[2] The parties do not dispute that the Intervening-Plaintiffs' charges of discrimination do not seek monetary relief; thus the remaining question is whether the EEOC has the power to grant non-monetary relief. See the Intervening-Plaintiffs' Complaints, Exhibit F attached to Wolmetz Declaration.

Under the present statutory framework, a plaintiff pursuing a Title VII claim in federal court must first exhaust administrative remedies and file a timely complaint with the EEOC.[3] See Deravin v. Kerik, 335 F.3d 195, 200 (2d Cir. 2003) ("As a precondition to filing a Title VII claim in federal court, a plaintiff must first pursue available remedies and file a timely complaint with the EEOC."). "This exhaustion requirement is an essential element of Title VII's statutory scheme and is designed to give the [EEOC] the opportunity to investigate, mediate, and take remedial action." Shah v. New York State Dep't of Civil Serv., 168 F.3d 610, 613 (2d Cir. 1999) (internal citations omitted).

In cases where the EEOC finds that there is reasonable cause to believe that an unlawful employment practice occurred, the Commission may "eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42

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[2] In discussing whether the EEOC Notice of Charges constitutes a claim, the parties appear to focus on the policy's second definition of claim, an administrative proceeding for non-monetary relief initiated by the receipt or filing of a notice of charges. Therefore, the Court's analysis will focus on this definition. The following analysis, however, applies equally to the policy's first definition of claim.

[3] The enforcement powers of the EEOC as laid out in this opinion refer only to the EEOC's power with respect to private employers, such as Trataros. The EEOC has broader enforcement powers with respect to federal employees. See 42 U.S.C. 2000e-16 ("Except as otherwise provided. . .the Equal Employment Opportunity Commission shall have authority to enforce provisions . . .through appropriate remedies including reinstatement or hiring of employees with or without backpay, as well as effectuate the policies of this section. . . ."); see also Brown v. General Serv. Admin., 425 U.S. 820, 832-33 (1976).

U.S.C. § 2000e-5 (b). If the EEOC is unable to secure a conciliation agreement, it may bring an enforcement action in federal court "to enjoin an employer from engaging in unlawful employment practices, and to pursue reinstatement, backpay, and compensatory or punitive damages." EEOC v. Waffle House, Inc., 534 U.S. 279, 287 (2002). If the EEOC chooses not to bring an enforcement action, it issues a right to sue letter. Additionally, regardless of whether the EEOC has completed its investigation or issued a determination of reasonable cause, claimants are entitled to request a right to sue letter 180 days after a charge has been filed. See 42 U.S.C. § 2000e-5(f). A right to sue letter gives the claimant 90 days from receipt of the letter to file suit. See 42 U.S.C. § 2000e-5(f)(1); Holt v. KMI-Continental, Inc., 95 F.3d 123, 127, fn.1 (2d Cir. 1996). Without a right to sue letter, the district court lacks jurisdiction over the Title VII claim. See Shah v. New York State Dep't of Civil Service, 168 F.3d 610, 613 (2d Cir. 1999).

Admiral argues that the term "non-monetary relief" is broad and includes a finding of discrimination by the EEOC. Therefore, Admiral argues, to the extent that the Intervening-Plaintiffs were seeking a finding of discrimination against Trataros, they were seeking "non-monetary relief." In support of this argument, Admiral cites Pinckney Community Schools v. Continental Casualty Company, 213 Mich. App. 521 (1995), in which the Michigan Court of Appeals held that a sex discrimination complaint filed with state and federal agencies was a claim within the meaning of the "claims-made" policy. The court reasoned that a person filing a complaint with the state employment agency was not merely giving the employer notice of the discrimination or the investigation; in addition, by filing the complaint the employee was requesting that the employer cease the discriminatory conduct or was seeking the agency's assistance in recovering compensation or reinstatement. See id. at 532.

Admiral's reliance on Pinckney is misplaced. Unlike the Admiral policy, the policy in Pinckney did not define claim. The Michigan court was therefore forced to rely on common definitions of claim such as a demand of a right. See id. at 529. Furthermore, the state employment agency at issue in Pinckney, the Michigan Department of Civil Rights ("DCR"), has greater powers than the EEOC. The DCR is "statutorily enabled to issue charges, hold hearings, correct past discriminatory practices, issue cease and desist orders, order the hiring, reinstatement, or upgrading of employees, order payment of compensation for the discrimination including back pay and reasonable attorney fees, and order payment of civil fines." Id. at 531-32 (citing M.C.L. § 37.2605; M.S.A. § 3.548 (605)). In contrast, the EEOC has no authority to order hiring, reinstatement, or the payment of damages. It may propose such relief during conciliation proceedings, but the parties' participation in informal dispute resolution methods such as conciliation, is voluntary; the EEOC has no authority to force a party to participate. See C.F.R. § 1601.24 (noting that where the Commission determines that reasonable cause exists, it shall endeavor to eliminate unlawful practice through conciliation). The EEOC may also seek such relief in an enforcement action, but then it is the court, not the EEOC, which ultimately grants the relief. Notably, in enforcement actions the district court is not required to give any deference to the EEOC's determination of reasonable cause. See Gourdine v. Cabrini Medical Center, No. 02-9211, 2004 WL 444561, at * 9 (S.D.N.Y. March 10, 2004) (stating that EEOC findings are not entitled to deference but noting that a court may give some consideration to the agency's findings in arriving at its decision). Therefore, at most, the EEOC's reasonable cause determination provides the claimant with the jurisdictional wherewithal to seek relief in the district court.

Alternatively, Admiral argues that even if the EEOC's reasonable cause determination does not itself qualify as relief, "implicit in their filing, the claimants began the process by which to seek relief from Trataros." See Reply at 6. As discussed earlier, Admiral is correct that the filing of a complaint with the EEOC is the beginning of the relief process in a Title VII case. Filing with the EEOC, however, is merely a prerequisite for obtaining relief; it is a precondition that opens the door to federal court. Ultimately, however, if any relief is to be granted, it is the court, not the EEOC, which grants it. See 42 U.S.C. § 2000e-5(g)(1).

Accordingly, because the EEOC has no power to grant non-monetary relief, the Court concludes that the Notice of Charges was not a "claim" as contemplated by the Admiral policy. The Notice of Charges was simply that: a notice to Trataros that the Intervening-Plaintiffs charged the company with unlawful employment practices. See Bensalem Township v. Western World Insurance Co., 609 F. Supp. 1343 (E.D. Pa. 1985) (finding that EEOC notice of discrimination charges was not a claim within the meaning of the policy, which did not define claim, because the EEOC letter at most was a notice that the complainant intended to hold the township responsible for a wrongful act).

3. Whether Trataros Gave Timely Notice

To be sure, a prudent insured would have given Admiral notice as soon as it received the EEOC Notice of Charges. Indeed, in a letter to Admiral, Trataros' own counsel stated that it was the company's general custom and practice to "immediately refer" such charges to the insurance carrier. See Exhibit N attached to Wolmetz Declaration. The EEOC Notice of Charges, however, was not a claim under the policy, and thus Trataros was not obligated to give notice to Admiral.

The Court, however, need not decide precisely when the claim was first made in order to

determine timeliness. Trataros received the EEOC's Determination Letter on May 22, 2001 and the EEOC filed the underlying lawsuit on August 2, 2001. Trataros first notified Admiral of the Intervening-Plaintiffs' charges on June 11, 2001. Therefore, if the EEOC Determination letter was the triggering event, Trataros' June 2001 notice was clearly timely. Similarly, if the triggering event was the filing of the lawsuit in August 2001, the notice was timely, albeit premature. The Court, therefore, finds that Tratoros' notice was timely and that it is entitled to coverage under the 2000-2001 policy. See Bensalem Township, 609 F. Supp. at 1349 (declining to specifically identify when the claim was first made since all relevant communications took place during the policy period). Accordingly, Trataros is entitled to summary judgment on the issue of coverage, and Admiral's summary judgment motion is denied.

B. Intervening-Plaintiffs v. Admiral

Admiral moves to dismiss the Intervening-Plaintiffs' direct action against it, arguing that the Intervening-Plaintiffs lack standing. The Intervening-Plaintiffs cross-move for summary judgment.

1. Admiral's Motion to Dismiss: Standard for Motion to Dismiss

A court may dismiss an action pursuant to Rule12(b)(6) of the Federal Rules of Civil Procedure only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which will entitle him to relief." Cohen v. Koenig, 25 F.3d 1168, 1172 (2d Cir. 1994) (internal quotations omitted). In considering the motion, the court must take "as true the facts alleged in the complaint and draw all reasonable inferences in the plaintiff's favor." Jackson Nat. Life Ins. v. Merrill Lynch & Co., 32 F.3d 697, 699-700 (2d Cir. 1994). Therefore, the court may not dismiss a complaint "simply because a plaintiff is unlikely to succeed on the

merits." Baker v. Cuomo, 58 F.3d 814, 818 (2d Cir. 1995). The complaint should be dismissed only if, assuming all facts alleged are true, plaintiff still fails to plead the basic elements of a claim. Id.

2. Standing of the Intervening Plaintiffs

Admiral contends that because the Intervening-Plaintiffs are strangers to the insurance contract on which they sue, their standing is governed by New York Insurance Law § 3420, which permits judgment creditors to sue insurers directly on unpaid judgments. Admiral maintains that § 3420(a)(2) precludes third parties from bringing direct actions against an insurer before obtaining a judgment against the insured. Therefore, because the Intervening-Plaintiffs have no such judgment against Trataros, Admiral contends that the Intervening-Plaintiffs' complaint must be dismissed.

The Intervening-Plaintiffs do not dispute that their statutory rights are governed by § 3420, but they challenge the applicability of subsection (a)(2). Specifically, the Intervening-Plaintiffs maintain that their standing should be analyzed under § 3420(a)(3), which gives an injured party the independent right to notify the liable party's insurer. They argue that this provision permits third party declaratory judgment actions prior to judgments.

In relevant part, Insurance Law § 3420, provides:

> (a) No policy or contract insuring against liability for injury to person. . . shall be issued or delivered in this state, unless it contains in substance the following provisions or provisions which are equally or more favorable to the insured and to judgment creditors so far as such provisions relate to judgment creditors: . . .
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> > (2) A provision that in *case judgment against the insured*. . . shall remain unsatisfied at the expiration *of thirty days from the serving of the notice of entry of judgment*. . . upon the insurer, then an

> action may. . . be maintained against the insurer under the terms of the policy or contract for the amount of such judgment not exceeding the amount of the applicable limit of coverage under such policy or contract.
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> (3) A provision that notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the insurer in this state. . . shall be deemed notice to the insurer. . . .
>
> (b) Subject to limitations. . . an action may be maintained by the following persons against the insurer upon any policy or contract of liability insurance which is governed by such paragraph *to recover the amount of a judgment against the insured. . .*
>
> (1) any person, who . . . has obtained a judgment against the insured. . .

Id. (Emphases Added).

It is well settled under New York law that a stranger to an insurance contract may not bring an action for damages against an insurer before a judgment has been rendered. Travelers Property Casualty Corp. v. Winterthur Int'l, No. 02-2406, 2002 WL 1391920, at * 4 (S.D.N.Y. June 25, 2002) (citing Jefferson v. Sinclair Refining, Co., 10 N.Y.2d 422, 427 (1961)); Richards v. Select Ins. Co., Inc., 40 F. Supp. 2d 163, 166 (S.D.N.Y. 1999). Whether a declaratory judgment action may proceed before a judgment, however, "presents a thornier question." Travelers, 2002 WL 1391920, at * 4.

The New York Court of Appeals has never addressed this issue and the Appellate Divisions are divided. See Vargas v. Boston Chicken, Inc., 269 F. Supp.2d 92, 94 (E.D.N.Y. 2003). Legal and policy arguments may be advanced on both sides of the issue. The Second Department permits third parties who are not privy to an insurance contract but who stand to benefit from the insurance policy to bring declaratory judgment actions to determine whether the

insurer is obligated under the policy. See, e.g., Watson v. Aetna Casualty & Surety Co., 675 N.Y.S.2d 367, 246 A.D.2d 57 (2d Dep't 1998). The First, Third, and Fourth Departments, however, do not permit such actions, holding that the third party must first obtain a judgment against the insured before they may sue the insurer. See, e.g., Lang v. Hanover Ins. Co., 309 A.D.2d 1123, 766 N.Y.S.2d 915, 916 (3d Dep't 2003); Tower Ins. Co. of New York v. Skate Key, Inc., 273 A.D.2d 158, 159, 712 N.Y.S.2d 352 (1st Dep't 1998); Hershberger v. Schwartz, 198 A.D.2d 859, 860, 604 N.Y.S.2d 428 (4th Dep't 1993). The federal courts in this Circuit that have addressed the issue have adopted the view of the First, Third, and Fourth Departments, favoring dismissal for lack of standing. See, e.g., Vargas v. Boston Chicken, 269 F. Supp.2d 92 (E.D.N.Y. 2003); Travelers, 2002 WL 1391920, at * 4; Richards v. Select Ins. Co., Inc., 40 F. Supp.2d 163 (S.D.N.Y. 1999).

In favoring dismissal, the courts have held that requiring third parties to obtain a judgment against the insured before directly suing the insurer is more consistent with the express language and plain meaning of § 3420. See, e.g., Vargas, 269 F.Supp.2d at 96; Travelers, 2002 WL 1391920, at *5; Clarendon Place Corp., v. Landmark Ins. Co., 587 N.Y.S.2d 311, 182 A.D.2d 6, 9-10 (1st Dep't 1992). Section 3420 requires a judgment before an injured party may enforce a right against the insurer. Here, the Intervening-Plaintiffs are attempting to enforce the insured's right to indemnity against Admiral. Under the plain meaning of the statute, the Intervening-Plaintiffs must first secure a judgment against Trataros, the insured, and then they may sue Admiral, the insurer, to enforce a right of indemnification. See Vargas, 269 F. Supp.2d at 96.

The legislative history of the statute also supports the judgment prerequisite. The original

version of § 3420, enacted in 1917, permitted third parties to directly sue insurers before obtaining judgments against the insured. See Richards, 40 F. Supp.2d at 168 (citing 1917 N.Y. Laws ch. 524). The statute was amended in 1918, however, and the prerequisite of a judgment against the insured was added. Id. The judgment requirement has remained the same ever since. Vargas, 269 F. Supp.2d at 97.

Furthermore, contrary to the Intervening-Plaintiffs' contentions, the analysis of the First, Third, and Fourth Departments is consistent with the jurisprudence regarding declaratory judgments. The Intervening-Plaintiffs have no present rights flowing from § 3420(b)(1) because the statutory condition precedent to bringing an action (a judgment against the insured) has not been satisfied. See Clarendon Place Corp., 587 N.Y.S.2d at 313. " '[A]bsent any legally cognizable interest in the insurance contracts at issue, there is no justiciable controversy between a third party and the insurer to give such party standing. . . [A]ny declaratory relief under these circumstances would be premature if the third party's standing to maintain such action is contingent on the occurrence of a future event which may not happen.' " Travelers, 2002 WL 13911920, at * 5 (quoting NAP, Inc. v. Shuttletex, Inc., 112 F. Supp.2d 369, 378 (S.D.N.Y. 2000)); see also Vargas, 269 F. Supp.2d 92 at 97 ("A declaratory judgment action is premature where standing to bring that action is contingent on a future event which is beyond the parties' control and may never occur."). Because the Intervening-Plaintiffs' action against Admiral is contingent on a future event, namely a judgment against Trataros in the underlying action and Trataros' refusal or inability to satisfy that judgment, the action is premature. See Richards, 40 F. Supp. 2d at 169-170.

Although the Declaratory Judgment Act grants federal courts great latitude in entertaining

suits seeking declaratory relief, the availability of a declaratory judgment "does not create an additional cause of action or expand the range of factual disputes that may be decided by a district court sitting in diversity." Richards, 40 F. Supp.2d at 169; see also Travelers, 2002 WL 1391920, at *5. Since the New York Court of Appeals would most likely dismiss the Intervening-Plaintiffs' declaratory judgment action for lack of standing, the action cannot be maintained in this diversity action governed by New York's substantive law. Travelers, 2002 WL 1391920, at *5.

The Court rejects the Intervening-Plaintiffs' contention that subsection (a)(3), the notice provision, provides them with standing. Although the Intervening-Plaintiffs may be correct that no court has ever addressed the merits of this argument, such a position is clearly against the weight of the case law. To find that subsection (b)(3) provides standing would undermine the sound conclusions of the cases discussed above. More importantly, however, such a conclusion fails on the merits. Section 3420(a)(3), which allows third parties to give notice to the liable party's insurer, is separate from a third party's right of direct action against the insurer, provided for in § 3420(a)(2). Section 3420(a)(3) merely preserves the injured party's right to sue the insurer in the future, once the conditions set forth in § 3420(a)(2), specifically a judgment against the insured, have been met. See AXA Marine & Aviation Ins. Limited v. Seajet Industries, Inc., 84 F.3d 622, 626 (2d Cir. 1996) (stating that § 3420(a)(3) allows an injured party to give notice to the liable party's insurer to protect its right of direct suit against the insurer under § 3420(a)(2)). Furthermore, to hold that § 3420(a)(3) gives the Intervening-Plaintiffs' standing would render § 3420(a)(2) meaningless, and such a result is contrary to fundamental principles of statutory construction. See Doe v. Chao, 124 S.Ct. 1204, 1214 (2004) ("It is a cardinal principle

of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be void, superfluous, void or insignificant.") (internal quotations omitted).[4]

Finally, the Court recognizes that in a given case common sense considerations, including the interest in effective litigation management, might suggest that third parties be permitted to address the issue of coverage early in the litigation, before they invest considerable resources in securing a judgment that may not be collectable without a responsible and obligated insurer. Fortunately, given the contours of this litigation, the relevant parties have had an opportunity to be heard on this important question.

3. The Intervening-Plaintiffs' Cross Motion for Summary Judgment

Because the Intervening-Plaintiffs' complaint is dismissed for lack of standing, their cross-motion for summary judgment is denied as moot.

CONCLUSION

The EEOC Notice of Charges is not a claim under the Admiral policy, and thus Trataros

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[4] In support of their argument that § 3420(a)(3) gives them standing, the Intervening-Plaintiffs cite a number of state and federal cases in which courts have adjudicated disputes between third parties and insurers regarding an injured party's notice under § 3420(a)(3) prior to the third party obtaining a judgment against the insured. Specifically, the Intervening-Plaintiffs cite this Court's opinion in Mount Vernon Fire Ins. v. Harris, 193 F. Supp.2d 674 (E.D.N.Y. 2002). Mount Vernon is distinguishable. In Mount Vernon, unlike in the case at bar, the insurer initiated the declaratory judgment action to determine its obligations under the policy. The other cases referenced by the Intervening-Plaintiffs are similarly distinguishable in that the insurers commenced the actions or the issue of standing was never raised. See Utica Mutual Ins. Co. v. Gath, 265 A.D.2d 805 (4th Dep't 1999) (insurer brought the declaratory judgment action); Walters v. Atkins, 179 A.D.2d 1067 (4th Dep't 1992) (standing was not raised; plaintiff, the injured third party, also obtained a default judgment against the insured); Jenkins v. Burgos, 99 A.D.2d 217 (1st Dep't 1984) (standing not raised).

gave timely notice to Admiral. Accordingly, Trataros is entitled to summary judgment. The Court further finds that the Intervening-Plaintiffs do not have standing to bring their direct action against the insurer, and thus the Admiral's motion to dismiss their complaint is granted. The Intervening-Plaintiffs' cross-motion for summary judgment is denied as moot.

SO ORDERED.

Dated: Brooklyn, New York
March 31, 2004

RAYMOND J. DEARIE
United States District Judge