IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NANCY A. NICHOLS, on behalf of herself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 4348-VCP
CHRYSLER GROUP LLC,	)	
Defendant.	)	

MEMORANDUM OPINION

Submitted: September 23, 2010
Decided: December 29, 2010

John S. Spadaro, Esquire, JOHN SHEEHAN SPADARO, LLC, Hockessin, Delaware; *Attorney for Plaintiff Nancy A. Nichols, on behalf of herself and all others similarly situated*.

Jennifer Gimler Brady, Esquire, Abigail M. LeGrow, Esquire, POTTER ANDERSON & CORROON LLP, Wilmington, Delaware; Kathy A. Wisniewski, Esquire, John W. Rogers, Esquire, THOMPSON COBURN LLP, St. Louis, Missouri; *Attorneys for Defendant Chrysler Group LLC*.

PARSONS, Vice Chancellor.

This case arises out of a proposed class action against the American car-maker Chrysler Group LLC ("Chrysler" or "Defendant") that seeks injunctive relief to end an allegedly illegal corporate policy relating to certain worker's compensation claims. After Chrysler unsuccessfully moved to have the Complaint dismissed, it filed an answer with a counterclaim for its reasonable attorneys' fees based on the Plaintiff's bad faith continuation of this suit despite being told by Chrysler that it has no such corporate policy. Plaintiff has moved to dismiss or strike this counterclaim. For the reasons stated in this Memorandum Opinion, I deny that motion.

I. BACKGROUND

A. Facts[1]

Plaintiff, Nancy A. Nichols, is an employee of Defendant, Chrysler, which is the post-bankruptcy successor entity to Chrysler LLC ("Old Chrysler").[2] Nichols brought this suit in both a personal and representative capacity; the latter on behalf of the putative class of all of Chrysler's "employees who enjoy . . . the benefit of worker's compensation protection under applicable worker's compensation laws, where those applicable laws require [Chrysler], as employer, to furnish reasonable and necessary medical services

---

1 Unless otherwise specified, the facts are drawn from Chrysler Group LLC's Answer to Amended, Verified Class Action Complaint and Affirmative Defenses and Verified Counterclaim (the "Answer and Counterclaim") and are deemed to be true, as they must be, for purposes of a motion to dismiss.

2 Pl.'s Am., Ver. (Proposed) Class Action Compl. (the "Am. Compl.") ¶¶ 1, 3-5.

under specified circumstances."[3] On February 28, 2005, Nichols alleges that she suffered a work-place injury when she became physically pinned between a Dodge Durango SUV and a pole while working on an Old Chrysler assembly line.[4] As a result, she claims to have suffered extensive injuries to her back, neck, leg, and pelvis.[5]

On approximately February 23, 2007, Nichols filed a petition before the Delaware Industrial Accident Board ("DIAB"), a quasi-judicial agency having statutory jurisdiction over certain matters relating to worker's compensation claims in Delaware. One issue before the DIAB in an evidentiary hearing later in 2007 was whether Nichols could receive compensation benefits with respect to the implantation of a spinal cord stimulator ("SCS"). According to Nichols, both her treating physician and Old Chrysler's "defense medical examiner" considered the SCS device reasonable and necessary to treat her post-accident pain.[6] As such, the DIAB approved benefits regarding the SCS for Nichols.[7]

This litigation centers on a number of statements Old Chrysler's counsel made at the DIAB hearing that Nichols suggests indicate that Old Chrysler had a corporate policy to "automatically den[y] worker's compensation benefits for [SCSs] until and unless

---

3 *Id*. ¶ 2.

4 *Id*. ¶ 7.

5 *Id*.

6 *Id*. ¶¶ 12-14.

7 *See Quinn v. DiamlerChrysler*, No. 1267177 (Del. I.A.B.); Ans. and Countercl. ¶ 9. Nichols was formerly known as Nancy A. Quinn. Am. Compl. ¶ 3.

ordered to pay for such benefits by a quasi-judicial or judicial body."[8] Nichols claims that the result of this alleged corporate policy is that each of Chrysler's U.S. employees now enjoys less than the full benefit of various state worker's compensation law protections.[9] The new Chrysler was formed in or about April 2009. Chrysler denies that it has a policy regarding worker's compensation benefits for SCS, such as Old Chrysler allegedly had.

B. Procedural History

Nichols filed her original class action Complaint against Old Chrysler on February 9, 2009. On March 9, 2009, Chrysler removed this action to the United States District Court for the District of Delaware (the "District Court"). On October 23, 2009, Judge Robreno ordered the case remanded to this Court. While the case was pending in the District Court, Old Chrysler filed for chapter 11 bankruptcy in the Southern District of New York.[10] As a result of the bankruptcy proceeding, I granted the parties' stipulation to substitute Chrysler for Old Chrysler in this action.[11] Nichols then filed her corresponding Amended Complaint naming Chrysler as the Defendant on February 19, 2009.

---

8 Ans. and Countercl. ¶ 5.

9 Am. Compl. ¶ 23. Nichols asserts that Chrysler still maintains the complained-of corporate policy of Old Chrysler. *Id*. ¶¶ 1(e)-(f), 23.

10 *See* Docket Item ("D.I.") 9.

11 D.I. 10.

On March 8, 2010, Chrysler moved to dismiss the Amended Complaint for lack of subject matter jurisdiction under Court of Chancery Rule 12(b)(1) and failure to state a claim under Rule 12(b)(6). In an oral ruling on June 28, I denied that motion.[12] Chrysler then filed its Answer and Counterclaim on July 13, 2010. On August 11, Nichols moved to dismiss or strike Chrysler's Counterclaim for its attorneys' fees. The parties have fully briefed that motion and this Memorandum Opinion constitutes my ruling on it.

C. Parties' Contentions

In its Counterclaim, Chrysler seeks to recover its attorneys' fees on the ground that notwithstanding the American Rule, under which litigants generally pay their own attorneys' fees regardless of the outcome, it is entitled to its fees under the bad faith exception to that rule. In particular, Chrysler denies it has any policy, as Nichols claims, under which it automatically denies worker's compensation benefits for SCSs until and unless a quasi-judicial or judicial body orders it to pay for such benefits.[13] Nichols responds that Chrysler's Counterclaim has no basis in law or fact and is simply a

---

[12] D.I. 31. In particular, I found that it was "conceivable, if all the facts turn out as plaintiff alleges, that there might be a violation of at least the Delaware workers' compensation laws. And in those circumstances, it might be possible that the plaintiff could show that she would be entitled to injunctive relief, which is a form of equitable relief not available at law. So I think that the [pleading] requirements of 12(b)(6) . . . have been met here, and that it is conceivable that there is a cognizable cause of action, and therefore, I deny both the defendant's motion to dismiss under Rule 12(b)(1) and the motion to dismiss under 12(b)(6)." D.I. 32, Transcript of Argument on Chysler's Motion to Dismiss, June 28, 2010 ("Tr."), at 15-16.

[13] Ans. and Countercl. ¶ 6.

retaliatory measure to intimidate her. Nichols primarily contends that this Court's denial of Chrysler's motion to dismiss her Amended Complaint for failure to state a claim precludes Chrysler, as a matter of law, from arguing that her claim for injunctive relief banning use of the challenged policy is frivolous or was brought in bad faith.

II. ANALYSIS

A. Standard for a Motion to Dismiss under Rule 12(b)(6)

When considering a motion to dismiss under Rule 12(b)(6), a court must assume the truthfulness of the well-pleaded allegations in the complaint and afford the party opposing the motion "the benefit of all reasonable inferences."[14] But, the court need not accept inferences or factual conclusions unsupported by specific allegations of fact.[15] Consequently, to survive a Rule 12(b)(6) motion, a complaint must contain allegations of facts supporting an inference of actionable conduct, not simply a conclusion to that effect.[16] In line with the standard articulated by the United States Supreme Court in *Bell Atlantic v. Twombly*,[17] the court must determine whether the complaint offered sufficient facts plausibly to suggest that the plaintiff ultimately will be entitled to the relief she

---

14 *Superwire.com, Inc. v. Hampton*, 805 A.2d 904, 908 (Del. Ch. 2002) (citing *Solomon v. Pathe Commc'ns Corp.*, 672 A.2d 35, 38 (Del. 1996)).

15 *Ruffalo v. Transtech Serv. P'rs Inc.*, 2010 WL 3307487, at *10 (Del. Ch. Aug. 23, 2010).

16 *Desimone v. Barrows*, 924 A.2d 908, 928-29 (Del. Ch. 2007).

17 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

seeks.[18] "If a complaint fails to do that and instead asserts mere conclusions, a Rule 12(b)(6) motion to dismiss must be granted."[19]

B. Whether Chrysler May Maintain its Counterclaim for Attorneys' Fees

1. The bad faith exception to the American Rule

Delaware follows the American Rule, under which each party must bear its own litigation expenses, including attorneys' fees, absent certain exceptions that warrant a shifting of such fees.[20] One exception to this rule is where the parties agree by contract to shift the costs and expenses of litigation.[21] Another exception is that a court may award attorneys' fees in cases where the court finds that a party either brought the action in bad faith or acted in bad faith or vexatiously to increase the costs of the litigation.[22] "Still, this Court does not lightly award attorneys' fees under this exception, and has limited its application to situations in which a party acted vexatiously, wantonly, or for

---

18 *Desimone*, 924 A.2d at 928-29.

19 *Ruffalo*, 2010 WL 3307487, at *10 (citing *Desimone*, 924 A.2d at 929).

20 *See, e.g.*, *ION Geophysical Corp. v. Fletcher Int'l, Ltd.*, 2010 WL 4378400, at *16 (Del. Ch. Nov. 5, 2010); *Postorivo v. AG Paintball Hldgs., Inc.*, 2008 WL 3876199, at *24 (Del. Ch. Aug. 20, 2008); *FGC Hldgs. Ltd. v. Teltronics, Inc.*, 2007 WL 241384, at *5 (Del. Ch. Jan. 22, 2007).

21 *ION Geophysical Corp.*, 2010 WL 4378400, at *16.

22 *See, e.g.*, *id.*; *Postorivo*, 2008 WL 3876199, at *24 ("As an equitable exception to the American Rule, however, this Court may grant attorneys' fees if it finds that a party brought litigation in bad faith or acted in bad faith during the course of the litigation."); *Cove on Herring Creek Homeowners' Ass'n v. Riggs*, 2005 WL 1252399, at *1 (Del. Ch. May 19, 2005).

oppressive reasons."[23] Moreover, for the exception to apply, a court must find that a party acted in bad faith using the "clear evidence" standard of proof.[24]

The Delaware Supreme Court has explained that while "there is no single, comprehensive definition of 'bad faith' that will justify a fee-shifting award, Delaware courts have previously awarded attorneys' fees where (for example) 'parties have unnecessarily prolonged or delayed litigation, falsified records or knowingly asserted frivolous claims.'"[25] In particular, the Supreme Court has held that a party engages in "'bad faith' sufficient for awarding attorneys fees to its opponent when it (i) defends the action despite knowledge there is no valid defense, (ii) delays the litigation and assert[s] frivolous motions, (iii) falsifies evidence, and (iv) changes his or her testimony to suit his or her needs."[26] The Court also found that there would be "adequate evidentiary support to impose attorneys' fees under the bad faith exception 'where [a] plaintiff had an improper motive for filing the action, [its] attorneys had made excessive and duplicative discovery requests while ignoring their own client's discovery obligations, and one of the plaintiff's key witnesses had refused to answer any questions during his deposition.'"[27]

---

23 *Postorivo*, 2008 WL 3876199, at *24. Indeed, for a party's conduct to constitute bad faith, that conduct must be "egregious." *In re Carver Bancorp, Inc.*, 2000 WL 1336722, at *3 (Del. Ch. Aug. 28, 2000).

24 *Carver Bancorp*, 2000 WL 1336722, at *3.

25 *Montgomery Cellular Hldg. Co. v. Dobler*, 880 A.2d 206, 227 (Del. 2005).

26 *P.J. Bale, Inc. v. Rapuano*, 2005 WL 3091885, at *1 (Del. Nov. 17, 2005) (TABLE) (citing *Montgomery Cellular*, 880 A.2d at 227-28).

27 *Id*. (citing *Kaung v. Cole Nat'l Corp.*, 884 A.2d 500, 507-08 (Del. 2005)).

Ultimately, the bad faith exception is applied in extraordinary circumstances primarily to deter abusive litigation and protect the integrity of the judicial process.[28]

2. Application to Chrysler's Counterclaim

Chrysler counterclaims for an award of its reasonable attorneys' fees expended in defending itself in this litigation, invoking the bad faith exception to the American Rule. It contends that it informed Nichols both in its pleadings and through the submission of affidavits of the fact that it has no corporate policy of automatically denying worker's compensation benefits for SCSs.[29] Chrysler further contends that Nichols never has been a victim of any such policy of Chrysler's and she has no information or evidence indicating that any other employee ever has been either.[30] As a result, Chrysler asserts that "[Nichols's] continuation of this litigation after knowing of the facts set forth [in the Answer and Counterclaim] has unfairly increased the costs of this litigation," which constitutes bad faith and warrants an award of its attorneys' fees.[31]

Nichols has moved to dismiss or strike Chrysler's Counterclaim, characterizing it as an apparent attempt to intimidate an adversary of vastly inferior resources.[32] She urges this Court to dismiss the Counterclaim for failure to state a claim for bad faith for

---

28 *See Montgomery Cellular*, 880 A.2d at 227.

29 *See* Ans. and Countercl. ¶ 7.

30 *Id*. ¶¶ 8-9.

31 *Id*. ¶¶ 11, 13.

32 Pl.'s Op. Br. ("POB") ¶ 6. Similarly, I refer to Defendant's Answering Brief and Plaintiff's Reply Brief as DAB and PRB, respectively.

two reasons: (1) that this Court's denial of Chrysler's motion to dismiss on June 28, 2010 indicates that her claims are at least "colorable" and not frivolous, which precludes a finding that she brought her claim in bad faith; and (2) that Chrysler's representative in the DIAB hearing in 2007 admitted the existence of the complained-of corporate policy, which further preludes a finding of frivolity.[33] Arguing that a claim cannot simultaneously be both colorable and frivolous, Nichols suggests that, as a matter of law, Chrysler cannot state a claim for frivolousness and, therefore, bad faith.

Nichols's contentions, however, are unpersuasive. In denying Chrysler's motion to dismiss her claim, I found that, based on the preliminary record before me and taking all inferences in favor of Nichols as the nonmovant, it was "conceivable" or "possible" that she had stated a cognizable cause of action, if the facts she alleged proved to be true.[34] The fact that Nichols's Complaint withstood a motion to dismiss does not mean, however, that her allegations are insulated from a claim of bad faith, especially when she continues to make such allegations beyond the pleadings stage. Notably, Nichols cites no case supporting such a sweeping proposition. In addition, while she alleges that Old Chrysler's counsel made certain statements before the DIAB suggesting that Chrysler uses the complained-of policy, those statements were made at a time when Old Chrysler controlled the business. Since then, Chrysler has taken over the operation of that

---

[33] POB ¶¶ 7-8; PRB ¶¶ 5, 7.

[34] *See supra* note 7.

business. Moreover, Chrysler has denied under oath that it has any policy of the kind Nichols alleges.[35] Thus, a factual dispute exists between the parties on this point.

At this preliminary stage in the proceedings, I find that, taking all inferences in favor of Chrysler as the nonmovant on the pending motion to dismiss, Chrysler has stated a claim against Nichols for its attorneys' fees based on its allegations that she is continuing this suit in bad faith. Chrysler alleges in its Counterclaim that it informed Nichols in pleadings and affidavits that it has no policy of automatically denying SCS claims as Nichols contends. Even if Nichols believed in good faith that such a policy existed when she filed her Amended Complaint, subsequent facts developed during discovery, for example, may confirm that no such policy exists. In that case, it is plausible that Nichols's continued prosecution of this litigation notwithstanding such new information may constitute bad faith sufficient to support shifting attorneys' fees. Indeed, the bad faith exception to the American Rule permits a court to determine not just whether the plaintiff brought a suit in bad faith, but also whether she conducted the litigation in bad faith,[36] such as where a plaintiff continues to prosecute an action even after learning of facts that demonstrate her allegations no longer have a colorable basis.[37]

---

[35] Ans. and Countercl. ¶ 6. Because the Amended Complaint seeks only injunctive relief, a key issue will be whether Chrysler continues to have a policy of the type counsel for Old Chrysler described to the DIAB.

[36] *See, e.g.*, *Nagy v. Bistricer*, 770 A.2d 43, 64-65 (Del. Ch. 2000) (noting that the court may shift fees under the bad faith exception where the defendants have engaged in bad faith conduct, which unnecessarily prolonged or delayed the litigation or knowingly asserted frivolous claims); *In re Carver Bancorp, Inc.*, 2000 WL 1336722, at *3 (Del. Ch. Aug. 28, 2000) ("The bad-faith exception

The few cases Nichols cites in her briefs are consistent with this proposition. For example, she cites *P.J. Bale, Inc. v. Rapuano*[38] for the proposition that a court will not shift fees under the bad faith exception where a party offers a "colorable" basis for its argument.[39] There, the Delaware Supreme Court affirmed the Chancellor's denial of the plaintiff's claim for attorneys' fees under the bad faith exception despite its having been

---

extends not just to actions brought in bad faith, but also to circumstances in which the 'litigation process itself is conducted in bad faith.'"); *see also Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 766 (1980) ("The bad-faith exception for the award of attorney's fees is not restricted to cases where the action is filed in bad faith. [B]ad faith may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation.") (internal quotation marks omitted).

In denying Chrysler's motion to dismiss the Amended Complaint, I found that the facts alleged in that pleading were sufficient to support a reasonable inference that Chrysler was continuing the challenged policy Old Chrysler allegedly had invoked in Nichols's case before the DIAB. That is not the only reasonable inference the facts alleged would support, however. Furthermore, the reasonableness of either side's position may change as more facts come to light in discovery.

37 *See Perichak v. Int'l Union of Elec. Radio & Mach. Workers, Local 601, AFL-CIO*, 715 F.2d 78, 87 n.8 (3d Cir. 1983). In that case, the Third Circuit determined that the trial record demonstrated that the plaintiff could not have brought suit "in other than 'bad faith,' nor could he have maintained [it] with any reasonable prospect of prevailing on the merits." *Id*. at 83. In partial support of this proposition, the court cited *Nemeroff v. Abelson*, 704 F.2d 652 (2d Cir. 1983), where the Second Circuit "affirmed an award of fees based on a finding of bad faith in maintaining an action after it became clear that the claim was no longer colorable-that the facts necessary to support the claim could not be established." *Perichak*, 715 F.2d at 87 n.8. The court noted that in *Nemeroff* the Second Circuit concluded that the attorneys had maintained that suit in bad faith because they persisted with it despite the fact that, after a long period of discovery, they could find no witnesses to support their case, and because the records they relied upon could not support an inference of wrongdoing. *Id*.

38 2005 WL 3091885 (Del. Nov. 17, 2005) (TABLE).

39 PRB 1.

granted summary judgment on its sole claim for specific performance of a real estate contract.[40] The Court explained that the Chancellor did not abuse his discretion when he found, among other things, that, even though it proved to be a losing proposition, "there was a colorable basis for [defendant's] position that specific performance would be inequitable," and, therefore, fee shifting based on the bad faith exception was not justified.[41]

Unlike in this case, the Court in *P.J. Bale* determined the applicability of the bad faith exception in the context of a ruling on the merits by way of summary judgment. Similarly, the courts in two other cases cited by Nichols in support of her essentially per se rule[42] determined whether to shift attorneys' fees based on bad faith conduct in the context of a much more fully developed record than is available on a motion to dismiss. One decision was made after a full bench trial and the other as part of an adversarial bankruptcy proceeding.

Here, by contrast, Nichols asks this Court to hold that she could not have brought her claim, or continued to prosecute it, in bad faith when the facts before the Court have not been developed beyond the pleading stage. Whether her claim for injunctive relief, which survived Chrysler's motion to dismiss, ultimately will prove to be meritorious

---

40 *P.J. Bale*, 2005 WL 3091885, at *1.

41 *Id*. at *2.

42 *Maris v. McGrath*, 850 A.2d 133, 135 (Conn. 2004); *In re Island Club Marina, Ltd.*, 41 B.R. 359, 362 (Bankr. N.D. Ill. 1984).

remains to be seen. But, at this preliminary stage of the litigation, I find that Chrysler has alleged sufficient facts in its Counterclaim to permit a plausible inference that by continuing to maintain this action Nichols may be acting in bad faith, and, thus, could be liable for Chrysler's attorneys' fees.

Conversely, in denying Nichols's motion to dismiss Chrysler's Counterclaim, I express no opinion whatsoever as to whether Nichols, in fact, has acted in bad faith in any of the respects alleged by Chrysler. These allegations, like Nichols's, remain to be determined as this litigation progresses.[43]

C. Standard for a Motion to Strike under Rule 12(f).

Nichols requests, in the alternative, that Chrysler's Counterclaim be stricken as legally insufficient under Rule 12(f). That Rule states, in pertinent part: "the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."[44] Motions to strike an insufficient defense or counterclaim under Rule 12(f) focus on the form of the pleading and not its substance.[45]

---

43 I also view Nichols's charges of intimidation as overblown because the courts have set a high hurdle for anyone seeking fee shifting under the American Rule precisely to avoid such abuses. Consequently, "[p]laintiffs who have a colorable basis for a claim and who act in good faith need not apprehend that defeat on the merits of their lawsuit will require them to pay their adversaries' legal fees." *Nemeroff v. Abelson*, 704 F.2d 652, 660 (2d Cir. 1983).

44 Ct. Ch. R. 12(f).

45 *See Salem Church (Del.) Assocs. v. New Castle Cty.*, 2004 WL 1087341, at *2 (Del. Ch. May 6, 2004); *Shactman v. Carey*, 1993 WL 393337, at *1 (Del. Ch. Sept. 10, 1993) ("It must be remembered that a motion to strike is not designed to test the sufficiency of the pleadings, in the same manner that a motion for

"When ruling on a motion to strike, 'the [c]ourt must construe all facts in favor of the nonmoving party and deny the motion if the defense is sufficient under law.'"[46] Generally, motions to strike are not favored and are granted sparingly.[47]

For the same reasons discussed *supra* Part II.B.2, and having construed the allegations underpinning Chrysler's Counterclaim in favor of Chrysler as the nonmoving party, I find that Nichols has failed to show that the Counterclaim is legally insufficient. Therefore, I also deny her motion to strike.

III. CONCLUSION

For the foregoing reasons, I deny Nichols's motion to dismiss or strike Chrysler's Counterclaim for an award of its reasonable attorneys' fees.

IT IS SO ORDERED.

---

summary judgment tests the sufficiency of the pleadings."); *Vets Welding Shop, Inc. v. Nix*, 1988 WL 67703, at *1 (Del. Super. June 20, 1988) ("In essence, a motion to strike reaches formal defects only.").

[46] *See, e.g.*, *Symbol Techs., Inc. v. Aruba Networks, Inc.*, 609 F. Supp. 2d 353, 356 (D. Del. 2009) ("[A] court should not grant a motion to strike a defense unless the insufficiency of the defense is 'clearly apparent.'"); *Rhone-Poulenc Surfactants & Specialties, Inc. v. GAF Chems. Corp.*, 1993 WL 69525 (Del. Ch. Mar. 2, 1993) (noting that a motion to strike "will not be granted unless, assuming the truth of the facts alleged in the answer, it is 'clearly apparent' that the defense is legally not sufficient."); *Nix*, 1988 WL 67703, at *1 ("A motion to strike also will be denied where an answer presents a bona fide issue of fact which should be heard on the merits. . . . If a defense is sufficient as stated, it will withstand a motion to strike because the facts alleged will be assumed to be admitted for purposes of the motion.").

[47] *See, e.g.*, *Salem Church (Del.) Assocs.*, 2004 WL 1087341, at *2; *Stinnes Interoil, Inc. v. Petrokey Corp. & Diamond Indus., Inc.*, 1983 WL 412258, at *1 (Del. Super. May 23, 1983).