

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

EMPLOYERS INSURANCE)
COMPANY OF WAUSAU,)
)
Plaintiff,)
)
v.) C.A. No. 03C-01-214 MMJ
)
PINKERTON'S INC., BURNS)
INTERNATIONAL SERVICES)
CORP., BURNS INTERNATIONAL)
SECURITY SERVICES)
CORPORATION, GLOBE)
AVIATION SERVICES)
CORPORATION, NATIONAL)
UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA,)
)
Defendants.)

ORDER

Submitted: April 21, 2004
Decided: May 11, 2004

Upon Plaintiff's Motion to Amend Complaint for a Declaratory Judgment Action
GRANTED

*Upon Defendants' Motion to Transfer the
Second Cause of Action of the Plaintiff's Complaint
to the Court of Chancery*
GRANTED

1. Plaintiff has moved to amend the complaint. This is Plaintiff's first request for amendment and is for the purpose of conforming the complaint to the evidence presented during discovery. Defendants do not oppose the motion for amendment and will not be prejudiced by the amendment. **THEREFORE**, Plaintiff's Motion to Amend Complaint for a Declaratory Judgment Action is hereby **GRANTED**.

2. Plaintiff Employers Insurance Company of Wausau filed this action against Defendants, seeking: (1) a declaration that Plaintiff is not obligated to defend or indemnify certain Defendants because they are not named insureds of Plaintiff; (2) reformation of insurance policies to exclude coverage pursuant to the doctrines of mutual mistake or unilateral mistake; (3) a judgment declaring the obligations of the parties with respect to actions underlying this declaratory judgment action; and (4) reformation of certain insurance policies so that those policies would provide coverage in excess of another policy.

3. The parties have agreed, and the Court finds, that this Court lacks subject matter jurisdiction over the Second and Fourth Causes of Action for reformation.¹ Defendants do not oppose Plaintiff's motion to transfer.

¹See *Travelers Indemnity Co. v. North American Phillips Corp.*, 1992 WL 210560, at *2 (Del. Ch. Aug. 26, 1992) ("Generally, reformation is an equitable remedy that may be granted only by a Court exercising equitable powers.");

THEREFORE, Defendants’ Motion to Transfer is hereby **GRANTED** pursuant to 10 *Del. C.* § 1902. The Second Cause of Action and the Fourth Cause of Action in the First Amended Complaint for A Declaratory Judgment Action, both for reformation, an equitable remedy, are hereby severed and transferred to the Court of Chancery. This Court retains jurisdiction over the First Cause of Action for declaratory judgment, and the Third Cause of Action for a declaration of the parties’ respective obligations with respect to underlying litigation. Subsequent to transfer of the Second and Fourth Causes of Action to the Court of Chancery, either party may petition for, or either court may *sua sponte* initiate, proceedings to consolidate the cases before one Judge or Chancellor in accordance with Article IV, Section 13(2) of the Delaware Constitution of 1897.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

Catamaran Acquisition Corp. v. Spherion Corp., 2001 WL 755387, at *5 (Del. Super. May 31, 2001) (“In Delaware, reformation is available only in the Court of Chancery.”).