

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PARTNERS HEALTHCARE SYSTEM,)	
INC. and THE GENERAL HOSPITAL)	
CORPORATION,)	
Plaintiffs,)	
)	
v.)	C.A. No. 14-10382-MLW
)	
COPELAND CORPORATION, LLC,)	
Defendant,)	
Third-Party Plaintiff,)	
)	
v.)	
)	
FISHER SCIENTIFIC COMPANY,)	
LLC,)	
Third-Party Defendant.)	

MEMORANDUM AND ORDER

WOLF, D.J.

August 22, 2016

Plaintiffs Partners Healthcare System, Inc. and The General Hospital Corporation (collectively "Partners") sued defendants Fisher Scientific Company LLC ("Fisher") and Copeland Corporation LLC ("Copeland") in the Superior Court for the Commonwealth of Massachusetts. Partners alleges that the compressor in a freezer it purchased from Fisher failed and, as a result, biological samples were destroyed. It further alleges that Copeland manufactured the failed compressor. Copeland removed the case to this court pursuant to 28 U.S.C. §1446. Partners settled with Fisher and dismissed the claims against it. Copeland then filed a Third-Party Complaint against Fisher seeking indemnity.

On February 3, 2016, Fisher filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and/or 12(c) (the "Motion to Dismiss"). In her May 16, 2016 Report and Recommendation, the Magistrate Judge recommended denying the Motion to Dismiss. The Report and Recommendation concludes that Copeland has pled sufficient facts to maintain a claim for implied-in-fact indemnity under admittedly applicable North Carolina law. On May 31, 2016, Fisher filed an objection to the Report and Recommendation. On June 9, 2016, Copeland replied to Fisher's objection.

The court has considered the Magistrate Judge's Report and Recommendation, and the submissions of the parties on the motion and objection. This court has reviewed de novo the questions of law and the issues to which Fisher has objected. See Fed. R. Civ. P. 27(c). The court finds the Report and Recommendation to be thorough, thoughtful, and persuasive. The Report and Recommendation is, therefore, being adopted.

In view of the foregoing, it is hereby ORDERED that:

1. The Magistrate Judge's attached Report and Recommendation (Docket No. 55) is ADOPTED and INCORPORATED pursuant to 28 U.S.C. §636.

2. For the reasons stated in the Report and Recommendation, the Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and/or 12(c) (Docket No. 30) is DENIED, in part. The Third-Party

Complaint (Docket No. 27) is dismissed without prejudice to an amendment to add the proper parties to the alleged indemnification agreement, which shall be filed within 21 days of this Order.

3. This case is RETURNED to the Magistrate Judge for future pretrial proceedings.


UNITED STATES DISTRICT JUDGE