

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Dartmouth Hitchcock Medical Center

v.

Civil No. 09-cv-160-JD

Cross Country Travcorps, Inc.,
d/b/a Cross Country Staffing
(and their affiliates), and
CHG Medical Staffing, Inc.,
d/b/a RN Network

O R D E R

After a dispute arose about insurance coverage during a medical malpractice action, Dartmouth Hitchcock Medical Center brought an action against Cross Country Travcorps, Inc., doing business as Cross Country Staffing, and their affiliates, (referred to collectively as "Cross Country") and CHG Medical Staffing, Inc., doing business as RN Network (referred to as "CHG"). In the complaint, Dartmouth alleges an indemnification claim and a contribution claim against both Cross Country and CHG. In Count III, Dartmouth alleges a breach of contract claim against CHG. Cross Country moves to dismiss Count III.

Cross Country's motion is defective in several respects. After filing its answer, Cross Country filed the motion to dismiss Count III, for failure to state a claim, on the same day. A motion to dismiss for failure to state a claim, under Federal Rule of Civil Procedure 12(b)(6), must be filed before the

defendant files an answer. Fed. R. Civ. P. 12(b). Once a party files an answer, the pleadings are closed. At that time, a party may file a motion for judgment on the pleadings. Fed. R. Civ. P. 12(c); see also Perez-Acevedo v. Rivero-Cubano, 520 F.3d 26, 29 (1st Cir. 2008). In addition, motions in federal court are governed by the federal rules and federal case law interpreting the federal rules, not New Hampshire law.

Even if Cross Country's procedural errors were overlooked, however, Cross Country appears to seek dismissal of a claim that is alleged only against its co-defendant, CHG. Therefore, Cross Country provides no basis for dismissing Count III.

Conclusion

For the foregoing reasons, the defendant's motion to dismiss (document no. 9) is denied without prejudice.

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

July 9, 2009

cc: Andrew D. Dunn, Esquire
Ronald J. Lajoie, Esquire