

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANCIS PASCALE, :
 :
 :
 Plaintiff, :
 :
 V. : CASE NO. 3:03-CV-1216(RNC)
 :
 GREAT AMERICAN INSURANCE CO., :
 :
 Defendant. :

RULING AND ORDER

This matter is before me on defendant's objection to the Magistrate Judge's recommendation that defendant's motion to set aside the default judgment be denied. In deference to the strong policy favoring resolution of disputes on the merits, I decline to adopt the recommended ruling and instead grant defendant's motion to set aside.

I. Facts

The relevant facts are set forth in the Magistrate Judge's recommended ruling, familiarity with which is assumed.

II. Discussion

Three factors are pertinent: (1) whether the default was willful; (2) whether setting aside the default would prejudice the adversary; and (3) whether a meritorious defense is presented. Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 96 (2d Cir. 1993). The Magistrate Judge denied defendant's motion for only one reason:

defendant had failed to present a meritorious defense.

In its objection to the recommended ruling, defendant contends that it has a meritorious defense to all the claims in the complaint. It states that plaintiff's contract and tort claims are unavailing because its rejection of the settlement offer was reasonable. See Bartlett v. Travelers' Ins. Co., 117 Conn. 147, 155 (1933)(insurer not liable for breach of contract unless rejection of settlement was unreasonable); Hoyt v. Factory Mut. Liability Ins. Co. of America, 120 Conn. 156, 159 (1935)(insurer liable for acting in bad faith only if rejection of offer unreasonable). It states that plaintiff's CUTPA/CUIPA claim is legally insufficient because the complaint alleges improper conduct in the handling of a single insurance claim, which does not rise to the level of a general business practice within the meaning of Conn. Gen. Stat. § 38a-816(6). See Lees v. Middlesex Ins. Co., 229 Conn. 842, 848-49 (1994). Finally, it states that, since the foregoing claims cannot succeed, neither can the remaining claims for reckless and willful misconduct. Each of these defenses has arguable merit.

The other two prongs of the Diakuhara test, which the Magistrate Judge did not address, are also satisfied. Defendant explains that its failure to respond to the complaint in a timely manner resulted from carelessness or negligence, rather than a deliberate decision. And plaintiff

has not shown that setting aside the default would prejudice his ability to litigate his claims on the merits.

III. Conclusion

Accordingly, the motion to set aside the default [Doc. #10] is hereby granted.

So ordered.

Dated at Hartford, Connecticut this 20th day of May 2004.

Robert N. Chatigny
United States District Judge