

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANN M. AUSTIN,

Plaintiff,

v.

FARMERS INSURANCE,

Defendant.

OPINION AND ORDER

12-cv-435-bbc

Plaintiff Ann Austin has filed a proposed civil complaint in which she alleges that defendant Farmers Insurance is failing to follow the terms of a car insurance policy she had purchased by refusing to make payments to her following a car accident in which she was injured. She has been found to be indigent and thus may proceed without prepayment of the filing fee.

In an October 24, 2012 order, I stated that interpretation of an insurance policy is a state claim, so this court cannot hear the case unless diversity jurisdiction is present. Tylka v. Gerber Products Company, 211 F.3d 445, 447–48 (7th Cir. 2000) (federal courts are “always obliged to inquire sua sponte whenever a doubt arises as to the existence of federal jurisdiction”). I noted that plaintiff had made no attempt to show that diversity jurisdiction applies to this case, so I gave her an opportunity to supplement her complaint with materials making clear the citizenship of the parties and the amount at stake in this case.

Now plaintiff has responded, submitting a document I construe as a supplement to the complaint indicating that she is a citizen of Wisconsin and that defendant is incorporated in and has its principal place of business in California. Dkt. #8. She states also that she seeks between \$500,000 and \$1 million in damages, so I conclude that she has the amount in controversy requirement.

The next step in the case is to screen the complaint under 28 U.S.C. § 1915 to determine whether any portion is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. Plaintiff is a pro se litigant, which means that her complaint will be construed liberally as it is reviewed for these potential defects. Haines v. Kerner, 404 U.S. 519, 521 (1972).

In her complaint, plaintiff alleges that she had an insurance policy with defendant but it “fraudulently” refused to pay her for the injuries she suffered. Plaintiff’s allegations are not very detailed but at this point in the proceedings I conclude that she has alleged enough to state claims for breach of the insurance contract and bad faith denial of benefits. Accordingly, she will be allowed to proceed against defendant on these claims.

In her supplement to the complaint, plaintiff states that she wants to add defendants to the case and lists the state of Arizona and several state and local agencies. Plaintiff’s ability to proceed against these defendants may be dubious for several reasons, chief among them the concept of sovereign immunity, Indiana Protection & Advocacy Services v. Indiana Family & Social Services Administration, 603 F.3d 365, 370 (7th Cir. 2010) (the doctrine

generally "bars actions in federal court against a state, state agencies, or state officials acting in their official capacities"), but in any case, plaintiff provides no allegations explaining what these proposed defendants did to violate her rights. Accordingly, to the extent that plaintiff wishes to amend her complaint to add these defendants, I will deny that request. If she wishes to bring claims against these defendants she will have to provide an amended complaint explaining in detail what these parties did to violate her rights or injure her.

Finally, I note that plaintiff has filed two more submissions. The first, submitted on December 3, 2012, is titled "Motion of Additional Time" and contains plaintiff's request for 30 days to consult with counsel. Because this time has already expired, I will deny the motion as moot. Plaintiff has filed also a document titled "Motion of Evidence" in which she provides copies of her driver's license and other documents to help prove her citizenship. Because plaintiff's earlier submission in response to the October 24, 2012 order is sufficient to establish the basis for diversity jurisdiction, I will deny this motion as moot as well.

ORDER

IT IS ORDERED that

1. Plaintiff Ann Austin is GRANTED leave to proceed on her state law breach of contract and bad faith claims against defendant Farmers Insurance.
2. Plaintiff's "Motion of Additional Time," dkt. #9, and "Motion of Evidence," dkt. #10, are DENIED as moot.
3. Copies of plaintiff's complaint, dkt. #1, supplement to the complaint, dkt. #8, and

this order are being forwarded to the United States Marshal for service on defendant.

4. For the remainder of the lawsuit, plaintiff must send defendant a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer, if any, will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that she has sent a copy to defendant or to defendant's attorney.

5. Plaintiff should keep a copy of all documents for her own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of her documents.

Entered this 24th day of January, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge