

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

BROKERAGE CONCEPTS, INC.,	:	February Term, 1999
Plaintiff	:	
	:	No. 1114
v.	:	
	:	Commerce Program
J.W.S. DELAVAU CO., INC.,	:	
Defendant	:	Control No. 56-00051956

J.W.S. DELAVAU CO., INC.,	:	January Term, 2000
Plaintiff	:	
	:	No. 413
v.	:	
	:	Commerce Program
GROUP SOURCES, INC., et al.	:	
Defendants	:	Control No. 55-00051955

OPINION

J.W.S. Delavau Co., Inc. has filed suit against Edward Bluestein and Group Sources, Inc. In addition, Delavau has filed counterclaims against Brokerage Concepts, Inc. in the matter brought by BCI against Delavau. Each of BCI, Bluestein and Group Sources has filed Preliminary Objections to the claims brought by Delavau. For the reasons set forth in this Opinion, this Court has issued a contemporaneous Order overruling the Preliminary Objections.

In its Objections, BCI argues that Philadelphia Local Rule of Civil Procedure 1028(c)(2) requires that an answer to preliminary objections is to be filed within twenty days of the filing of the preliminary objections themselves. However, Philadelphia Rule 1028(c)(2) was amended by the Board of Judges on February 17, 2000, with the amendment effective April 24, 2000. See Legal Intelligencer, May 5, 2000, at 46-47. The revised Philadelphia Rule 1028(c)(2) states that “[a]n answer need not be filed to preliminary objections raising an issue under Pa. R.C.P. 1028(a)(2), (3), [or] (4).” Because BCI’s Objections are based on the assertion that Delavau’s pleadings are legally

insufficient, an objection set forth in Pa. R.C.P. 1028(a)(4), the twenty-day period does not apply and the Court may not grant BCI's Objections as uncontested.

Under Pennsylvania Rule of Civil Procedure 1019(b), any allegations of fraud are to be averred with particularity. While the complaint is to be dismissed if the required standards are not met, Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick, 526 Pa. 541, 553, 587 A.2d 1346, 1252 (1991), the pleadings need only "explain the nature of the claim to the opposing party so as to permit him to prepare a defense" and "be sufficient to convince the court that the averments are not merely subterfuge." Bata v. Central-Penn Nat'l Bank of Phila., 423 Pa. 373, 380, 224 A.2d 174, 179 (1966). In determining whether the particularity pleaded is sufficient, the court is to look at the complaint as a whole. Commonwealth by Zimmerman v. Bell Telephone Co. of Pa., 121 Pa. Commw. 642, 551 A.2d 602 (1988).

Delavau's allegations lay out facts sufficiently particular to support its fraud allegations, including the dates of various benefits plan proposals, the companies and individuals making each proposal and the content of each proposal. This information allows BCI, Group Sources and Bluestein to prepare a defense to the claims and convinces the Court that the allegations are not simply a ruse invented by Delavau. As a result, the Objections on the grounds of insufficient particularity have been overruled.

Pennsylvania Rule of Civil Procedure 1019(h) requires that, if a pleading is based on a writing, the material portion of the writing is to be attached or, if it is not accessible to the pleader, the substance of the writing is to be set forth, along with the reason that the writing is not available. See also Commonwealth of Pa. Dept. of Transportation v. Bethlehem Steel Corp., 28 Pa. Commw. 214, 222, 368 A.2d 888, 894 (1977) (holding that Rule 1019(h) does not require the attachment of a contract between a plaintiff and a co-venturer of the defendant).

BCI does not identify any particular writings as missing, but simply claims that "[t]o the extent such alleged representations were in writing, Delavau fails to identify the writings and presumably failed to attached copies of same to its counterclaim." However, Delavau has attached to its counterclaim all of the documents mentioned therein. As a result, BCI's Objections have been overruled.

Group Sources and Bluestein assert that Delavau has not attached the Stop-Loss Agreement or the Third-Party Administrator Agreement to its complaint. This is irrelevant, as none of Delavau's claims against either Group Sources or Bluestein is based on either the Stop-Loss Agreement or the

Third-Party Administrator Agreement. Consequently, Delavau has met the requirements of Rule 1019(h), and the Objections have been overruled.

BY THE COURT:

JOHN W. HERRON, J.

Dated: July 13, 2000

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ORDER

AND NOW, to wit, this 13th day of July, 2000, upon consideration of Plaintiff-Counterclaim Defendant Brokerage Concepts, Inc.'s Preliminary Objections to Defendant J.W.S. Delavau Co., Inc.'s Counterclaim and any responses thereto, and Defendants Group Sources, Inc.'s and Edward Bluestein's Preliminary Objections to Plaintiff J.W.S. Delavau Co., Inc.'s Claim and any responses thereto, it is hereby ORDERED and DECREED that the Preliminary Objections are OVERRULED.

BY THE COURT:

JOHN W. HERRON, J.