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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

BEAZLEY UNDERWRITING, LTD.,

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC,

Defendant.

Case No. 8:21-cv-642

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS OR STAY

[Filed concurrently with Notice of Motion, Declaration of Michael J. Finnegan, and [Proposed] Order]

Date: May 24, 2021
Time: 1:30 p.m.
Dept: Courtroom 9 B
Judge: Hon. Cormac J. Carney

Trial Date: not set

Defendant Fitness International, LLC ("Fitness") respectfully submits this memorandum of points and authorities in support of its Motion to Dismiss or Stay.

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I. INTRODUCTION

Fitness suffered grievous physical loss of or damage to covered property caused by the SARS-CoV-2 virus (the "Coronavirus"), the disease it causes, Coronavirus Disease 2019 ("COVID-19"), and governmental orders relating thereto (collectively "COVID Losses"), during both the 2019/2020 Policy Year and the 2020/2021 Policy Year of its property insurance. On January 6, 2021, Fitness filed a recovery action in Washington state court against the eight insurers subscribed to the 2019/2020 Policy. See Fitness International, LLC v. Zurich American Insurance Company, et al., King County Cause No. 21-2-00261-3 SEA ("Zurich I"). On April 8, 2021, Fitness filed a second recovery action in Washington state court against seven of the same insurers, plus Plaintiff Beazley Underwriting, Ltd. ("Beazley") and two others, subscribed to the 2020/2021 Policy. See Fitness International, LLC v. Zurich American Insurance Company, et al., King County Cause No. 21-2-04704-8-SEA ("Zurich II").

Beazley filed this action only after receiving notice of Fitness' intent to sue Beazley in Washington state court. Fitness provided such notice on March 18, 2021, as required by the Washington Insurance Fair Claims Act ("IFCA"), because that statute requires an insured to provide 20-day advance notice of its intent to pursue claims for bad faith (with an additional three business days for mailing). Having all but ignored Fitness' coverage claim for over two months, Beazley responded to such notice by filing the instant complaint ("Preemptive Action") in this Court just days before the notice period was to elapse and before *Zurich II* was filed.

Beazley's action, however, should be dismissed or stayed pending resolution of *Zurich I* and *Zurich II*, the parallel Washington state court proceedings.

First, under Ninth Circuit precedent, every relevant factor weighs against this Court exercising its discretionary jurisdiction over Beazley's Declaratory Judgment Act claim. *See Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998) (en banc) ("The district court should avoid needless determination of state law issues; it should discourage litigants from filing declaratory actions as a means of forum shopping; and

it should avoid duplicative litigation."). Here, the dispute between the parties raises purely issues of insurance and contract interpretation, which are areas particularly reserved to state law. Indeed, Beazley's complaint is in federal court based only on the appearance of complete diversity, which would have been destroyed had Beazley joined all necessary parties. Moreover, Beazley's complaint solely for declaratory relief was a preemptive strike to choose its own forum and avoid facing its reckoning in state court proceedings that were already underway involving the same insured properties, the same Zurich Edge policy form, the same losses, and an overlap of insurers. Finally, all of Beazley's requested declarations are duplicative of the issues that will be resolved in the pending state court litigation. While the issues overlap, the Beazley claims represent only a subset of the state claims, which will address not only the coverage dispute with Beazley but also the coverage obligations of all the insurers subscribed to the 2020/2021 Policy ("2020/2021 Insurers").

Second, this action should be dismissed because Beazley failed to join necessary and indispensable parties to its complaint pursuant to Federal Rule of Civil Procedure 19, to wit, the other ten insurers subscribed to Fitness' 2020/2021 Policy Year. Beazley, an insurer with only 1/50th (or 2%) of the total $500 million in limits for the 2020/2021 Policy Year, seeks declaratory judgment in the absence of all the other interested parties, all of whom issued policies based on the same Zurich Edge Policy form. Significantly, that Zurich Edge Policy master policy (like the 2019/2020 Zurich Edge Policy) contains a Subscription Policy Endorsement that requires the policies to be treated for contract interpretation and other purposes as a single policy (the "One Policy Endorsement"). Joining the other insurers, some of whom claim to be and are residents of the same state as Fitness—Illinois in particular—would destroy diversity jurisdiction. Permitting this action to proceed without them would result in potentially conflicting rulings and inconsistent obligations for all the 2020/2021 Insurers. Stated simply, allowing this Preemptive Action to proceed would violate the One Policy Endorsement.

Thus, Beazley's anticipatory action under the Federal Declaratory Judgment Act should be dismissed or stayed pending resolution of the parallel state court proceedings. Having already suffered hundreds of millions of dollars in losses and been abandoned by its insurers, Fitness should not be required to litigate multiple actions in different forums simultaneously regarding the same coverage issues for the same insured locations under the same Zurich Edge Policy form.

II. BACKGROUND

The facts giving rise to the parties' dispute are set forth in detail in the complaints in *Zurich I* (Finnegan Decl., Ex. B) and *Zurich II* (Finnegan Decl., Ex. A). Facts relevant to this Motion are set forth here.

A. The 2019/2020 and 2020/2021 Policies and Fitness' Catastrophic Losses

Beazley and other insurers (collectively, "Insurers") sold to Fitness "all risk" commercial property insurance on the Zurich Edge Policy form that covered Fitness locations throughout the U.S. and Canada. Fitness obtained broad coverage for loss of or damage to property and for time element (also known as business interruption), subject to a limit of $500 million for each of the Policy Years 2019/2020 (Finnegan Decl., Ex. B ¶ 79) and 2020/2021 (Finnegan Decl., Ex. A ¶ 123). The 2019/2020 and 2020/2021 Policies were both subscription policies issued by Zurich American Insurance Company ("Zurich") and use the same master policy, the Zurich Edge Policy form, with its accompanying endorsements. Beazley is one of eleven insurers subscribed to the 2020/2021 Policy, and Beazley provides a 10% share of the primary $100 million in limits provided by that policy. (Compl. ¶ 11-12; Finnegan Decl., Ex. A ¶ 238.)

Additionally, the One Policy Endorsement signed by all 2020/2021 Insurers, including Beazley, requires (among other things) that "[a]ny questions arising under the subscribers' respective policies to which this Subscription Policy Endorsement is attached as to the appropriate limit of liability, deductible or **any other questions as to**

the extent, scope or amount of coverage shall be resolved in accordance with the result that would have been achieved if there was only a single policy issued by a single insurer." (Compl. Ex. A, at 213) (emphasis added).

The Coronavirus and/or COVID-19 caused physical loss of or damage to Fitness' properties and its Attraction Properties (properties that attract customers to Fitness) covered by the 2019/2020 and 2020/2021 Policies, resulting in hundreds of millions of dollars of lost business income. Governmental orders closing Fitness' locations and/or restricting their services, in response to the Coronavirus, caused further physical loss of or damage to Fitness' covered properties. Fitness' COVID Losses in Washington and elsewhere are ongoing. (Finnegan Decl., Ex. A ¶ 91); (Finnegan Decl., Ex. B ¶ 57.)

On May 5, 2020, Fitness provided notice to the *Zurich I* Insurers of its losses under the 2019/2020 Policies. On August 28, 2020, Zurich and the other *Zurich I* Insurers, without conducting any meaningful investigation of Fitness' losses, denied Fitness' claim under the 2019/2020 Policies, alleging that Fitness' losses did not fall within the ambit of the Policies' coverage for "physical loss or damage," among other issues.

As a result of Zurich's and the other *Zurich I* Insurers' wrongful denial, Fitness was forced into court. On January 6, 2021, Fitness filed *Zurich I* in Washington state court, seeking coverage under its 2019/2020 Policies.[1] Fitness chose Washington state court because, among other things, Fitness owns and operates 27 health clubs in Washington; and, prior to the emergence of the Coronavirus and COVID-19, Fitness had over 240,000 members in Washington and employed over 1,000 Washingtonians. (Finnegan Decl., Ex. A ¶ 52); (Finnegan Decl., Ex. B ¶ 33.)

[1] Earlier that same day, Fitness voluntarily dismissed without prejudice an action Fitness had filed against the 2019/2020 Insurers in Orange County Superior Court and that those insurers had removed to this Court. Fitness dismissed that action because, among other reasons, the action lacked complete diversity, divesting this Court of subject matter jurisdiction over the action.

B. The *Zurich I* Insurers Seek to Deprive Fitness of its Chosen Forum

Twenty days after Fitness filed *Zurich I*, the *Zurich I* Insurers filed a competing action in California state court (the "*Second-Filed Zurich I Action*"). (Finnegan Decl. ¶ 7, Ex. C.) On February 19, 2021, however, the Washington state court presiding over *Zurich I* issued an Order granting Fitness' motion, enjoining the parties from participating in the *Second-Filed Zurich I Action*, and staying *Zurich I* (but for limited discovery) pending resolution of the Insurers' anticipated *Forum Non Conveniens* motion ("*February 19 Injunction*"). (Finnegan Decl. ¶ 9, Ex. D.)

C. Fitness Prepares to File *Zurich II* regarding the 2020/2021 Policy Year Against Beazley and the Other 2020/2021 Insurers

During the 2020/2021 Policy Year, Fitness sustained massive losses arising from the physical loss of or damage to Fitness' covered property caused by the Coronavirus and COVID-19 that were covered under 2020/2021 Policies. Accordingly, on January 11, 2021, Fitness provided the *Zurich II* Insurers with notice of Fitness' claim under the 2020/2021 Policies. (Ex. E, at p.5.) Over three weeks later, on February 2, 2021, McLarens, acting on behalf of the *Zurich II* Insurers, acknowledged notice of the 2020/2021 Claim via email and attached a pro forma letter indicating that McLarens had been retained by the *Zurich II* Insurers to investigate Fitness' Claim. (*Id.*) As of March 16, 2021, neither McLarens nor the *Zurich II* Insurers had followed up with Fitness or attempted to investigate Fitness' Claim. (*Id.*)

After waiting over two and a half months with no meaningful response from the *Zurich II* Insurers, Fitness was left with no choice but again to seek recourse in court. Before it could do so, however, Fitness was required by Washington state law to provide notice of its intent to sue the *Zurich II* Insurers—including Beazley—for bad faith failure to investigate under the 2020/2021 Policies. *See* RCW 48.30.015(8)(a) (requiring 20-day notice period, plus three business days for mailing). Thus, on March 18, 2021, Fitness notified the Washington Office of the Insurance Commissioner and Insurers of its intent to pursue a claim for bad faith against Beazley and the other

2020/2021 Insurers. (Finnegan Decl. ¶ 11, Ex. E); (Ex. E.)[2]

On April 6, 2021, by its own admission acting in response to Fitness' notice and in anticipation of *Zurich II*, Beazley filed its Complaint in this Court before the expiration of Fitness' statutory waiting period in Washington. (Compl. ¶ 22-24.)

On April 8, 2021, Fitness filed *Zurich II* against Beazley and all but one of the other 2020/2021 Insurers.[3] (Finnegan Decl. ¶ 4, Ex. A.) In addition to including all the relevant insurers, Fitness' *Zurich II* Complaint contains extensive allegations not raised in the Preemptive Action but part of the dispute between Fitness and its 2020/2021 Insurers, including Beazley. On April 12, 2021, Fitness moved to consolidate *Zurich I* and *Zurich II* because of the substantial overlap of issues and defendants. (Finnegan Decl. ¶ 14, Ex. F.) Fitness also moved in Washington state court on the same date to enjoin the 2020/2021 Insurers, including Beazley, from participating in the Preemptive Action. (Finnegan Decl. ¶ 15, Ex. G.) As of April 26, 2021, all seven *Zurich I* insurers that are also *Zurich II* insurers had agreed to consolidate *Zurich I* and *Zurich II* in Washington state court before Judge Bender. *Id.*

III. ARGUMENT

This Court should dismiss Beazley's complaint because Beazley used the Declaratory Judgment Act as a preemptive strike to avoid pending state court litigation on the same issues. Separately, this Court should dismiss Beazley's complaint under Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join necessary parties where joining such parties would destroy diversity.

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[2] Additionally, Fitness provided notice of its intent to sue the *Zurich I* Insurers for a bad faith denial of its Claim under the 2019/2020 Policies.

[3] Fitness was unable to join one 2020/2021 Policy Year insurer, Chubb Bermuda Insurance Ltd. ("Chubb Bermuda"), as a defendant in *Zurich II* because, on April 6, 2021 (the same day Beazley filed the Preemptive Action), that insurer, without ever notifying Fitness, sought and obtained an *ex parte* anti-suit injunction from a court in London, England. Chubb Bermuda's precipitous action was, by its own admission to the court in London, an attempt to evade litigation in Washington state court.

A. The Court Should Decline Discretionary Jurisdiction Over Beazley's Declaratory Judgment Act Claim

1. The Ninth Circuit presumptively favors pending state court litigation over duplicative Declaratory Judgment Act claims.

Beazley seeks relief solely under the Declaratory Judgment Act, 28 USC 2201, *see* Compl. ¶¶ 3, 6, which provides (in part) that "[i]n a case of actual controversy within its jurisdiction … any court of the United States … may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought," 28 U.S.C. § 2201(a). District courts may, however, decline to entertain a claim under the Declaratory Judgment Act, even if there is subject matter jurisdiction. *See Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1222-23 (9th Cir. 1998) (en banc) ("[T]he Declaratory Judgment Act is 'deliberately cast in terms of permissive, rather than mandatory, authority.'") (quoting *Public Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 250 (1952) (J. Reed, concurring)); *see also Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995) ("Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants.").

Where a Declaratory Judgment Act claim presents the same state law issues as in pending state court litigation, "there exists a presumption that the entire suit should be heard in state court." *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1366–67 (9th Cir. 1991) (citing *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 495 (1942)); *see also Principal Life Ins. Co. v. Munoz*, No. CV0906195SJOSSX, 2009 WL 10675883, at *2 (C.D. Cal. Dec. 17, 2009) ("The present dispute concerns state law issues and therefore, the presumption arises that the entire suit should be heard in state court."). The presumption in favor of state court litigation avoids "uneconomical" and "vexatious" litigation. *Chamberlain*, 931 F.2d at 1366-67 (quoting *Brillhart*, 316 U.S. at 495)). Moreover, where a Declaratory Judgment Act complaint relies on diversity of citizenship, "the federal interest is at its nadir." *Cont'l Cas. Co. v. Robsac Indus.*, 947

F.2d 1367, 1371 (9th Cir. 1991), overruled on other grounds by *Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220 (9th Cir. 1998) (en banc); *see also Maryland Cas. Co. v. Witherspoon*, 993 F. Supp. 2d 1178, 1183 (C.D. Cal. 2014) (citing *Robsac*); *Principal Life Ins.*, 2009 WL 10675883, at *2 ("[T]he federal interest in ruling in such cases is 'at its lowest' where the sole basis of jurisdiction is diversity of citizenship.").

Under the Supreme Court's decision in *Brillhart*, the Ninth Circuit has directed district courts to consider three primary factors when deciding whether to entertain jurisdiction over a Declaratory Judgment Act claim: "The district court should avoid needless determination of state law issues; it should discourage litigants from filing declaratory actions as a means of forum shopping; and it should avoid duplicative litigation." *Dizol*, 133 F.3d at 1225. To that end, courts consider whether the Federal Declaratory Judgment Act is being used to start anticipatory or preemptive litigation, thus neutralizing the usual deference granted to a plaintiff's choice of forum. *See Z-Line Designs, Inc. v. Bell'O Int'l, LLC*, 218 F.R.D. 663, 665 (N.D. Cal. 2003) ("'The Declaratory Judgment Act is not to be invoked to deprive a plaintiff of his conventional choice of forum and timing, precipitating a disorderly race to the courthouse.'") (quoting *DeFeo v. Procter & Gamble Co.*, 831 F. Supp. 776, 778 (N.D. Cal. 1993)); *Gribin v. Hammer Galleries, a Div. of Hammer Holding, Inc.*, 793 F. Supp. 233, 235 (C.D. Cal. 1992) ("'The Declaratory Judgment Act was not intended to enable a party to obtain a change of tribunal from a state to federal court, and it is not the function of the federal declaratory action merely to anticipate a defense that otherwise could be presented in a state action.'") (quoting Wright & Miller, 10B Fed. Prac. & Proc. Civ. § 2758 (4th ed.)); *cf. Younger Mfg. Co. v. Essilor Int'l Compagnie Generale D. Optique*, No. CV1301210JVSPJWX, 2013 WL 12131286, at *4 (C.D. Cal. May 29, 2013) ("[T]he Court need not give much weight to Plaintiffs' choice of this forum because the Court has found that they improperly filed this anticipatory action.").

Additional relevant factors may include: "whether the declaratory action will settle all aspects of the controversy; whether the declaratory action will serve a useful

purpose in clarifying the legal relations at issue; whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage; or whether the use of a declaratory action will result in entanglement between the federal and state court systems. In addition, the district court might also consider the convenience of the parties, and the availability and relative convenience of other remedies." *Dizol*, 133 F.3d at 1225 n.5 (citing *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 145 (9th Cir. 1994) (Garth, J., concurring)).

Under all these standards, as described below, Beazley's complaint must be dismissed.

2. Beazley's Declaratory Judgment Act claim duplicates pending state court litigation and should be dismissed.

Beazley's complaint fails all three prongs of the *Brillhart* standard.

First, the only issues presented by Beazley's requests for declaratory judgment involve purely state law: contract interpretation and insurance law. Numerous courts have recognized that this *Brillhart* factor weighs against Declaratory Judgment Act claims based exclusively on insurance policy disputes. *See Axis Surplus Ins. Co. v. McCarthy/Kiewit*, No. CIV. 10-00595 LEK, 2012 WL 112544, at *10 (D. Haw. Jan. 12, 2012) ("[T]here is no compelling federal interest in adjudicating insurance disputes based on diversity jurisdiction."); *see also, e.g.*, *Emps. Reinsurance Corp. v. Karussos*, 65 F.3d 796, 798 (9th Cir. 1995), overruled on other grounds by *Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220 (9th Cir. 1998) (en banc); *Principal Life Ins. Co. v. Munoz*, No. CV0906195SJOSSX, 2009 WL 10675883, at *2 (C.D. Cal. Dec. 17, 2009); *United States v. Lyon*, No. CV F 07-491 LJO GSA, 2008 WL 2626814, at *5-6 (E.D. Cal. June 26, 2008); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Aero Jet Servs.*, LLC, No. CV-11-01212-PHX-DGC, 2011 WL 4708857, at *2-3 (D. Ariz. Oct. 7, 2011); *Navigators Specialty Ins. Co. v. CHSI of California, Inc.*, No. 3:12-CV-1611-GPC-JMA, 2013 WL 435944, at *8 (S.D. Cal. Feb. 4, 2013). The first *Brillhart* factor thus weighs in favor of dismissal of Beazley's complaint.

Second, Beazley filed a complaint in federal court in a transparent attempt at forum shopping. Beazley admits that it filed its complaint in federal court ***after*** being notified, pursuant to the Washington IFCA, that Fitness intended to file claims in Washington state court. *See* Compl. ¶22-23. Further, Beazley is well aware that Fitness has been litigating the same disputed Zurich Edge Policy form for the prior policy year in Washington state court for months against seven of the same insurers as the 2020/2021 Policy to which Beazley subscribes. *See id.* ¶¶18. Courts have repeatedly held that the Declaratory Judgment Act should not be used for "anticipatory" or "preemptive" litigation attempting to deprive the natural plaintiff of its choice of venue. *See, e.g.*, *Z-Line*, 218 F.R.D. at 665; *Gribin*, 793 F. Supp. at 235-37; *see also DeFeo*, 831 F. Supp. at 778. The second *Brillhart* factor thus also weighs against entertaining jurisdiction over Beazley's complaint.[4]

Third, Beazley's requests for declaratory judgment are entirely duplicative of issues presented for resolution in Washington state court in *Zurich II*, in which Fitness seeks coverage for its COVID Losses under the 2020/2021 Policy. The issues include, but are not limited to, (i) whether the presence of the Coronavirus on the premises caused direct physical loss of or damage to covered property; and (ii) whether the governmental orders, either shutting down Fitness' health clubs or restricting their use, in whole or in part, caused direct physical loss of or damage to covered property. Thus, all the questions raised in Beazley's request for declaratory relief are duplicative of the issues before the Washington state courts in *Zurich I* and/or *Zurich II*.

Further weighing against Beazley's declaratory judgment action are the other considerations suggested by *Dizol* and *Kearns*. Beazley's complaint cannot resolve all aspects of the parties' controversy because it does not address 100% of the coverage under the applicable policy. Indeed, far from addressing 100 percent of the coverage

[4] Having filed *Zurich II* before the statutory notice period elapsed, Fitness must seek to amend the complaint in *Zurich II* to add its bad faith claim.

afforded by the 2020/2021 Policies, Beazley's Preemptive Action addresses a mere 2% of their limits (1/50th of the $500 million limits provided by the 2020/2021 Policies) and a paltry 1% of the $1 billion in limits provided by all of the Policies. Moreover, Beazley's anticipatory complaint is textbook "procedural fencing," intended to deprive Fitness, the natural plaintiff, of its choice of forum. Beazley's complaint fails to join the vast majority of interested parties already litigating in state court, guaranteeing that any declaration by this Court will entangle the federal courts in issues of Washington law being considered by a Washington court. And there is no question of convenience to Beazley, which is a foreign entity effectively equidistant from Los Angeles and Seattle. As a result, this Court should decline to exercise its discretionary jurisdiction under the Declaratory Judgment Act and dismiss this case.

B. The Complaint Should Be Dismissed for Failure to Join Necessary Parties

1. Parties necessary for the granting of complete relief or for the avoidance of conflicting judgments or prejudice must be joined or the action dismissed.

The failure to join a necessary and indispensable party under Rule 19 is a basis for dismissal under Rule 12(b)(7). The Ninth Circuit follows a three-step inquiry under Rule 19. *See E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1078 (9th Cir.2010).

First, "the court must determine whether a nonparty should be joined under Rule 19(a)(1)," considering whether (A) "'in that person's absence, the court cannot accord complete relief among the existing parties'" or (B) "'that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.'" *Id.* at 1081 (quoting Fed. R. Civ. Proc. 19(a)(1)).

Next, if joinder is required, the court "determine[s] whether it is feasible to order

that the absentee be joined." *Id.* at 1078.

Finally, if joinder is not feasible, the court "look[s] to the factors provided in Rule 19(b) to determine whether, 'in equity and good conscience, the action should proceed among the existing parties or should be dismissed.'" *Id* at 1083. (quoting Fed. R. Civ. Proc. 19(b)). Specifically, the court considers: "(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by shaping the judgment or the relief; (3) whether a judgment rendered in the person's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed." *Id.* at 1083 (citing Fed. R. Civ. Proc. 19(b)).

Here, as set forth below, Beazley's complaint must be dismissed under Rule 19, because the other 2020/2021 Insurers are necessary parties under Rule 19(a), cannot feasibly be joined, but are indispensable parties under Rule 19(b).

2. The other ten insurers subscribed to the 2020/2021 policy with Beazley are necessary parties that Beazley failed to join.

All insurers for the 2020/2021 Policy Year subscribed to the same master policy, based on the Zurich Edge Policy form, the meaning of which Beazley seeks to have declared in a separate action from its fellow insurers. Significantly, that master policy (as does the master policy for the 2019/2020 policy year) contains the One Policy Endorsement, which requires the insurers to treat Fitness' policy as though it were one policy issued by one insurer for "[a]ny questions arising under the subscribers' respective policies … as to the appropriate limit of liability, deductible or any other questions as to the extent, scope or amount of coverage." Compl. Ex. 1, at 213. Thus, this Court "cannot accord complete relief among existing parties" when the insurers liable for 98% of the coverage limits for the 2020/2021 Policy Year are absent. Fed. R. Civ. Proc. 19(a).

Although the court could technically enter declaratory judgment as to Beazley in the absence of the other insurers, doing so would be against the public interest. "To

determine completeness of relief, this order should not only consider the interests of the parties in the suit, but also the interests 'of the public in avoiding repeated lawsuits on the same essential subject matter.'" *Zurich Am. Ins. Co. v. Elecs. for Imaging, Inc.*, No. C 09-02408 WHA, 2009 WL 2252098, at *3 (N.D. Cal. July 28, 2009) ("*Elecs. for Imaging*") (quoting Notes of Advisory Committee on Rule 19). As in *Elecs. for Imaging*, "[p]ermitting this suit to proceed without the absent parties will result in duplicative litigation as the facts and issues being litigated in both courts are completely identical, and will possibly result in conflicting outcomes." *Id.* ("The fact that each insurance contract created a separate obligation has no bearing since each policy incorporated terms and provisions of other policies."). Accordingly, complete relief requires joining the absent Insurers. *See id.*

Further, the other ten Insurers subscribed to the 2020/2021 Policy that is the subject of Beazley's requested declarations have an indisputable "interest relating to the subject of the action." Fed. R. Civ. Proc. 19(a)(1)(B); *see Navigators*, 2014 WL 2196403, at *2 (holding an absent insurer was an interested party because of interrelated insurance policies). Consequently, rulings with respect only to Beazley risk prejudice to absent parties. On the one hand, a declaration in favor of Fitness would, "as a practical matter," directly "impair or impede" the other insurers' defenses in *Zurich I* and *Zurich II*, Fed. R. Civ. Proc. 19(a)(1)(B)(i), "because it[] implies that they will be liable," *Navigators*, 2014 WL 2196403, at *4. *See also Elecs. for Imaging*, 2009 WL 2252098, at *4 ("Rule 19(a)(1)(B)(i) is not limited to circumstances where parties will be technically bound to a judgment."). On the other hand, a declaration in favor of Beazley would "leave an existing party"—Fitness—"subject to a substantial risk of … inconsistent obligations" from its insurers relative to *Zurich I* and *Zurich II* in Washington state court. Fed. R. Civ. Proc. 19(a)(1)(B)(ii); *see Elecs. for Imaging*, 2009 WL 2252098, at *4 ("The risk of inconsistency is substantial with parallel litigation and will most likely fall on EFI, the insured and the common defendant."). Thus, the other ten insurers subscribed to the 2020/2021 policy are necessary parties under Rule 19(a).

3. Joinder of the other 2020/2021 Policy Year insurers is not feasible.

For purposes of federal diversity subject matter jurisdiction, Fitness—a limited liability company—is a citizen of, among other states, the State of Illinois. (Finnegan Decl. ¶ 16). Several of other 2020/2021 Policy Year insurers also assert Illinois citizenship for jurisdictional purposes. (*Id.*) Because Beazley's complaint relies on complete diversity (Compl. ¶ 7), joining all the 2020/2021 Policy Year insurers would destroy this Court's subject matter jurisdiction. Consequently, joinder of the other 2020/2021 Policy Year insurers is not feasible. *See Navigators*, 2014 WL 2196403, at *3; *Elecs. for Imaging.*, 2009 WL 2252098, at *5.

4. The other 2020/2021 Insurers are indispensable parties under Rule 19(b), so the Complaint must be dismissed.

All the equitable considerations enumerated under Rule 19(b) demonstrate that this action cannot be maintained "in equity and good conscience" without joining the other 2020/2021 Policy Year insurers. Because joining those parties would destroy diversity, Beazley's complaint must be dismissed.

As discussed above, a judgment rendered in this Court "might prejudice" the absent insurers "or the existing parties," Fed. R. Civ. Proc. 19(b)(1), with inconsistent rulings. *See Navigators*, 2014 WL 2196403, at *4 (noting practical risk a declaration would "weaken their ability to protect their interests in related state proceedings"); *Elecs. for Imaging*, 2009 WL 2252098, at *4 ("The first factor weighs heavily towards dismissal for nonjoinder because of these two considerations.").

Moreover, the risk of prejudice cannot be "lessened or avoided" by shaping the relief or otherwise. Fed. R. Civ. Proc. 19(b)(2). There is no way to resolve the dispute between Beazley and Fitness without impacting the parallel litigation between Fitness and the other 2020/2021 Policy Year insurers in Washington state court. Both the commonality of the Zurich Edge Policy form and the One Policy Endorsement between and among all the Insurers mean that any declaration of Beazley's obligations must

impact all subscribed insurers. *See Navigators*, 2014 WL 2196403, at *4.

In addition, a judgment rendered in the absence of the other 2020/2021 insurers would not be "adequate." Fed. R. Civ. Proc. 19(b)(3). Whatever the court declares with regard to Beazley, it will necessarily omit 98% of the insurance coverage. Moreover, Beazley will also be liable in *Zurich II* in Washington state court, which may issue a conflicting judgment. *See Navigators*, 2014 WL 2196403, at *4 ("[J]udgment in [the other insurers'] absence could be inadequate because it would not conclusively determine the coverage limits of all parties."); *Elecs. for Imaging*, 2009 WL 2252098, at *4 ("Given the pending state litigation, any judgment rendered in this court cannot be adequate because its finality will be contingent on another court's ruling.").

Finally, Beazley has "an adequate remedy" in the ongoing, parallel state court litigation of the same issues. Fed. R. Civ. Proc. 19(b)(4). *See Navigators*, 2014 WL 2196403, at *4 ("[A]ll parties and non-parties are subject to state court jurisdiction, and Navigators would have an adequate remedy there."); *Elecs. for Imaging*, 2009 WL 2252098, at *4 ("Here, plaintiffs can litigate effectively in state court.").

IV. CONCLUSION

For the foregoing reasons, the Court should decline to exercise jurisdiction over Beazley's Declaratory Judgment Act claim and dismiss the Complaint or, at least, stay proceedings pending the resolution of *Zurich II*. Alternatively, the Court should dismiss the Complaint under Rule 12(b)(7) based on Beazley's failure to join necessary and indispensable parties.

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