IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	
STARLIGHT BALLROOM DANCE CLUB, INC. and PHILIP CHAN,	:	
	:	**No. 04-3393**
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J. **November 16, 2004**

On September 27, 2004, this Court entered a default judgment in favor of Plaintiff Nationwide Mutual Insurance Company ("Nationwide") against Defendants Starlight Ballroom Dance Club, Inc. ("Starlight") and Philip Chan, Starlight's principal (collectively, "Defendants"). Presently before the Court are: (1) Defendants' motion to open the default judgment; and (2) a motion to intervene by Randy Dover, a patron of Starlight. For the reasons set forth below, Defendants' motion is denied, and Dover's motion is denied as moot.

I. BACKGROUND

The following facts are taken from the parties' submissions. From July 29, 2002 through July 29, 2004, Starlight purchased identical yearly insurance policies ("the Policy") from Nationwide to cover liability claims arising from Starlight's ballroom dance school business. (Compl. ¶¶ 25-26.) Lee Deng, an independent insurance broker, served as Starlight's insurance broker for the Policy. (*Id.* ¶ 33.) Unbeknownst to Nationwide, Starlight also hosted private dance parties at night, at which

Defendants sold alcoholic beverages. (*Id*. ¶¶ 27, 29-31.) Although Deng advised Chan that Starlight should obtain liquor liability coverage and even provided Chan with a form for such coverage, Starlight did not complete the form and did not obtain coverage. (*Id*. ¶¶ 34-39.) Instead, when Starlight renewed the Policy on July 29, 2003, it represented to Nationwide that it was merely running a dance school. (*Id*. ¶¶ 47-48.) On the night of September 28, 2003, Dover attended a private dance party at Starlight. (*Id*. ¶ 13.) During the party, he slipped on a bottle, fell, and injured his hip. (Dover's Mot. to Intervene ¶ 7.)

On July 19, 2004, Nationwide filed this action against Defendants seeking a declaration that it had no obligation under the Policy to defend Defendants for any claims arising out of Dover's accident because Defendants did not disclose to Nationwide that: (1) Defendants were operating a night club; and (2) Defendants were selling liquor during parties they held at the club. On July 20, 2004, Defendants were served with a summons and the complaint. (Bergmann Decl. ¶ 4.) Defendants did not plead, answer, or otherwise respond to the summons and complaint. Accordingly, on August 11, 2004, Nationwide filed a motion for default pursuant to Federal Rule of Civil Procedure 55(a), which was served on Defendants. Defendants did not respond in any manner and on August 12, 2004, the Clerk of Court entered a default in favor of Nationwide. On September 16, 2004, Nationwide moved for entry of a default judgment. Again, this motion was served on Defendants, but Defendants did not respond. By Order of September 27, 2004, this Court entered a final judgment in favor of Nationwide, and the case was closed on September 30, 2004. On October 19, 2004, Starlight moved to open the default judgment, and on October 26, 2004, Dover moved to intervene.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 55(c) states that a default judgment may be set aside in accordance with Federal Rule of Civil Procedure 60(b). FED. R. CIV. P. 55(c). Rule 60(b) provides that "upon such terms as are just," a party can be relieved from a final judgment for several enumerated reasons, including mistake or excusable neglect or for "any other reason justifying relief from the operation of the judgment." FED. R. CIV. P. 60(b). Furthermore, when a final judgment has been entered because of a default and the defaulting party moves to set aside that judgment, a district court must undertake a three factor analysis. *Zawadski De Bueno v. Bueno Castro*, 822 F.2d 416, 419-20 (3d Cir. 1987). "[T]he proper inquiry is: whether vacating the judgment will visit prejudice on the plaintiff, whether the defendant has a meritorious defense, and whether the default was the result of the defendant's culpable conduct." *Resolution Trust Corp. v. Forest Grove*, 33 F.3d 284, 288 (3d Cir. 1994). The court must weigh these three factors to reach a conclusion. *Bonner v. SAJE Int'l, Inc.*, Civ. A. No. 02-6696, 2004 U.S. Dist. LEXIS 17733, at *4-5 (E.D. Pa. Sept. 3, 2004) (stating that "[e]ven where the plaintiff will not suffer prejudice if the default is opened or where a meritorious defense is raised, culpable conduct by the defendant may justify leaving the default judgment in place"); *see also Scottsdale Ins. Co. v. Littlepage*, Civ. A. No. 92-2734, 1993 U.S. Dist. LEXIS 9557 at *2-6, 1993 WL 275162, at *2-5 (E.D. Pa. July 16, 1993) (balancing factors). Ultimately, "a motion for relief under Rule 60(b) is directed to the sound discretion of the Court." *Scott v. U.S. Envt'l Protection Agency*, 185 F.R.D. 202, 206 (E.D. Pa. 1999).

III. DISCUSSION

This Court will now analyze the aforementioned three factors to determine whether the

default judgment against Defendants should be set aside.

a. Meritorious Defense

The "threshold question" when considering a motion to vacate a default judgment is "whether the defendant has alleged facts which, if established at trial, would constitute a meritorious defense to the cause of action." *Cent. W. Rental Co. v. Horizon Leasing*, 967 F.2d 832, 836 (3d Cir. 1992). This factor is foremost in this Court's analysis because "[g]enerally, a federal court will grant a motion under Rule 55(c) only after some showing is made that if relief is granted the outcome of the suit may be different than if . . . the default judgment is allowed to stand." 10A CHARLES ALAN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND PROCEDURE § 2697 (3d ed. 1998); *see also Tozer v. Krause Milling Co.*, 189 F.2d 242, 244 (3d Cir. 1951).

To determine whether Defendants' motion establishes a "meritorious defense," this Court must look to Nationwide's declaratory judgment action and examine what facts a defendant must establish to successfully defend against it. *See United States v. $55,518.05 in U.S. Currency*, 728 F.2d 192, 195 (3d Cir. 1984) (holding that establishment of meritorious defense necessitates examination of underlying claim). In this case, Nationwide has sought a declaratory judgment that it has no duty to defend any lawsuit arising out of Mr. Dover's accident because the insurance policy is void for misrepresentation. Under Pennsylvania law, an insurance policy is void for misrepresentation when the insurer establishes three elements: (1) that the representation was false; (2) that the insured knew that the representation was false when made or made it in bad faith; and (3) that the representation was material to the risk being insured. *New York Life Ins. Co. v. Johnson*, 923 F.2d 279, 281 (3d Cir. 1991); *see also Shafer v. John Hancock Mut. Life Ins. Co.*, 189 A.2d 234, 236 (Pa. 1963). Here, Defendants admit that they held dance parties and sold alcohol. (Pls.' Mot.

to Set Aside Default ¶ 19.) Moreover, they have not alleged any fact tending to show that they informed Nationwide of these activities. Therefore, it is not disputed that the representations made by Defendants to Nationwide regarding the use of the Starlight club were false and that the Defendants knew that they were false.

The only remaining question is whether these representations were material. "A misrepresented fact is material if being disclosed to the insurer it would have caused [the insurer] to refuse the risk altogether or to demand a higher premium." *Johnson*, 923 F.2d at 281. Moreover, "it is not necessary that the alleged misrepresentation be related to the claimed [damages] for which benefits are sought. A statement is material if it is relevant to the risk assumed, even if it is unrelated to the loss actually incurred." *Am. Franklin Life Ins. Co. v. Galati*, 776 F. Supp. 1054, 1060 (E.D. Pa. 1991). Nationwide insists that Defendants' misrepresentations regarding the night-time dance parties caused Nationwide to issue a policy under false pretenses and has submitted evidence that this information would have changed its risk calculation and caused it to not issue the Policy on the same terms. (Frey Aff. ¶ 5.) As Defendants have not submitted any contrary evidence, the Court finds that Defendants' omissions were relevant and therefore material. The only response Defendants provide to Nationwide's allegations of material misrepresentation is simply to assert that "[t]he occasionally [sic] evening of dance and sale of beer does not void the policy and is not inconsistent with the business of Starlight." (Pls.' Mot. to Set Aside Default ¶ 19.) Defendants have therefore failed to make any allegation or introduce any evidence which could lead this Court to conclude that Defendants have a valid defense to the allegation of material misrepresentation. *See $55,518.05 in U.S. Currency*, 728 F.2d at 195 (showing of a meritorious defense requires allegation of "specific facts beyond simple denials or conclusionary statements").

In conclusion, Defendants have not rebutted any of Plaintiffs' allegations regarding their misrepresentations or the materiality of those misrepresentations. Therefore, Defendants have not alleged any facts which, if established at trial, would constitute a meritorious defense to the declaratory judgment action. This factor thus militates strongly in favor of upholding the default judgment.

b. Culpable Conduct

The next consideration in evaluating Defendants' motion is whether the defaulting party's culpable conduct led to the default. "Reckless disregard for repeated communications from plaintiffs and the court . . . can satisfy the culpable conduct standard." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1183 (3d Cir. 1984). In several cases, the Third Circuit has vacated orders refusing to set aside default judgments where the default resulted from a mere breakdown in communication among the defaulting parties' counsel. *See Zawadski*, 822 F.2d at 420-21; *see also Gross v. Stereo Component Sys., Inc.*, 700 F.2d 120, 124 (3d Cir. 1983). Here, however, there was no such breakdown. Defendants do not dispute that they received all correspondence in this case. On May 3, 2004, Nationwide sent Defendants a letter in which Nationwide stated that it had been investigating Dover's claim and that, as a result of that investigation:

> Nationwide is not admitting that any legal duty to defend or indemnify exists or ever existed with respect to this claim . . . . At this time, based on the information to date, it appears that there may be no coverage for all or part of the claim due to the facts of the claim.

(Pls.' Mot. to Set Aside Default Ex. B.) Defendants did not reply to this letter. Nor did Defendants answer, appear, or plead in response to the July 20, 2004 summons and complaint; the August 11, 2004 motion for default; the August 12, 2004 entry of default; or the September 16, 2004 motion for

default judgment. At no time during this entire proceeding did Defendants contact either this Court or Nationwide. Instead, Defendants simply state that they gave all the paperwork they received to their insurance broker, Deng. (Pls.' Mot. to Set Aside Default ¶¶ 11-12.) "[D]etermining whether neglect is excusable is an 'equitable' determination that 'takes account of all relevant circumstances surrounding the party's omission.'" *Manus Corp. v. NRG Energy, Inc.*, 188 F.3d 116, 125 (3d Cir. 1999). In this case, Defendants have demonstrated a reckless disregard to any consequences arising from Mr. Dover's accident, and their current position was created solely by their own actions. Therefore, as Defendants' culpable conduct caused their default, this factor also weighs heavily in favor of upholding the default judgment.

c. Prejudice

The final consideration is whether the non-defaulting party will suffer prejudice if the action is re-opened. *See Gross*, 700 F.2d at 122. Prejudice may be shown if, inter alia, the non-defaulting party's "ability to pursue the claim has been hindered since the entry of the default judgment"; if the non-defaulter has "asserted loss of available evidence"; or if there may be "increased potential for fraud or collusion, or substantial reliance upon the judgment." *Feliciano v. Reliant Tooling Co.*, 691 F.2d 653, 657 (3d Cir. 1982). Although Nationwide has asserted that it has substantially relied upon the judgment, Nationwide has not demonstrated that, apart from the significant sum of money that it has expended thus far to secure a final judgment, it will suffer significant prejudice in the categories listed above. Accordingly, Nationwide has presented only a modest showing of prejudice. However, because the other two factors weigh heavily in favor of denying Defendants' motion, the final judgment of this Court will not be disturbed. *See Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 73 (3d Cir. 1987); *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984). While

this Court is cognizant that the law favors disposition of claims on the merits, and therefore "in a close case doubts should be resolved in favor of setting aside the default and obtaining a decision on the merits," *Farnese v. Bagnasco*, 687 F.2d 761, 764 (3d Cir. 1982), this case does not present such a situation.

IV. CONCLUSION

Therefore, for the reasons set forth above, Defendants' motion to set aside the default judgment is denied. Accordingly, as a final judgment has been entered in this action, Randy Dover's motion to intervene is denied as moot. An appropriate Order follows.

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Defendants.	:	**No. 04-3393**

ORDER

AND NOW, this **16th** day of **November, 2004**, upon consideration of Defendants' Motion to Set Aside the Default Judgment, the Motion of Petitioner Randy Dover to Intervene, Plaintiff's responses thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendants' Motion (Document No. 9) is **DENIED**.

2. Petitioner's Motion (Document No. 10) is **DENIED as moot**.

BY THE COURT:

Berle M. Schiller, J.