



**Dated: July 30, 2019**  
**The following is ORDERED:**

*Jennie D. Latta*

Jennie D. Latta  
UNITED STATES BANKRUPTCY JUDGE

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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In re  
LARRY PARKE CHINN,  
Debtor.

Case No. 17-30912-L  
Chapter 7 (asset)

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MINNESOTA LIFE INSURANCE COMPANY,  
Plaintiff,

v.  
LARRY PARKE CHINN,  
Defendant.

Adv. Proc. No. 18-00157

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**ORDER DENYING DEFENDANT'S  
MOTION TO STRIKE PORTIONS OF AMENDED COMPLAINT**

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BEFORE THE COURT is the motion of Defendant Larry Parke Chinn ("Defendant" or "Chinn") to strike portions of Plaintiff's First Amended Complaint ("Motion to Strike") [Adv. Proc. Dkt. No. 61] on the grounds that the First Amended Complaint ("Amended Complaint") contains immaterial, impertinent and/or scandalous matter. Plaintiff Minnesota Life Insurance

Company (“Plaintiff” or “Minnesota Life”) filed a response in opposition. Adv. Proc. Dkt. No. 77. A hearing was held by the Court on July 18, 2019.

Chinn’s motion, pursuant to Federal Rule of Bankruptcy Procedure 7012(f), seeks an order striking Exhibit F (Chinn’s consent order resulting from a complaint filed with the Minnesota Commissioner of Insurance); Exhibits G, H, I, and K (other consent orders resulting from a complaint filed with the Minnesota Commissioner of Insurance); Exhibits B and C (state court complaints filed against Chinn by other insurance companies); and Exhibit D (alleged false marketing materials); and allegations regarding these exhibits. Under Rule 12(f), a “court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Chinn argues that the exhibits and related paragraphs are immaterial and impertinent. Chinn also argues that some of the exhibits represent settlement discussions and/or contain hearsay.

Minnesota Life asserts that under clear Sixth Circuit law, there is no basis to strike the exhibits. Chinn not only must show immateriality or impertinence, but he must also show prejudice. Since the court will try the claims in a bench trial, Minnesota Life argues there is no danger of prejudice. Moreover, it asserts that the arguments raised by Chinn are evidentiary arguments, which are inappropriate for consideration on a motion to strike and therefore, Chinn’s motion should be denied.

## **DISCUSSION**

The action of striking a pleading should be used sparingly by the courts and granted only when the pleading to be stricken has no possible relation to the controversy. *Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953). Absent some form of “significant prejudice” to one or more parties to the action, “where the challenged allegations

‘might serve to achieve a better understanding of the claim for relief or perform some other useful purpose in promoting the just and efficient disposition of the litigation,’ a motion to strike should be denied.” *Starnes Family Office, LLC v. McCullar*, 765 F. Supp. 2d 1036, 1059 (W.D. Tenn. 2011), quoting, *Sherrills v. Beison*, 2005 WL 1711132, at \*1 (W.D. Mich. 2005); 5C Wright & Miller, FED. PRACTICE & PROCEDURE: CIVIL 3D §1382. A matter is immaterial if it bears “no essential or important relationship to the claim for relief.” *Onebeacon Ins. Co. v. Whitehaven Golf Course, L.L.C.*, 2001 WL 1906280, slip op. at \*2 (W.D. Tenn. Sept 26, 2001). A matter is impertinent if it does not pertain to the issues in question. 5C Wright & Miller, FED. PRACTICE & PROCEDURE: CIVIL 3D § 1382.

The court will address each of the exhibits and allegations that Chinn seeks to strike in turn.

#### **Exhibit F and Paragraph 35**

Exhibit F to the Amended Complaint purports to be a copy of a complaint made by a policy holder to Mike Rothman, Commissioner, Minnesota Department of Commerce. It describes a situation in which the customer was induced to purchase a \$1.5 million life insurance policy on the representation that he would only be responsible to make three payments. Paragraph 35 of the Amended Complaint links this complaint to Chinn, specifically alleging that Chinn was determined by the State of Minnesota to have been involved in the sale of this policy. Paragraph 35 also alleges that Chinn entered into a consent order ordering Chinn and FICC to cease and desist from sale of any premium-financed life insurance products in the State of Minnesota and ordering payment of restitution. A copy of the consent order is attached to the Amended Complaint as Exhibit G.

The information in Exhibit F together with the explanatory allegations in paragraph 35 are clearly material. They relate to and allege fraudulent activities consistent with those described in other paragraphs of the Amended Complaint. Chinn's arguments in support of the motion to strike Exhibit F are evidentiary arguments raising questions about the foundation for the document. Not only are the connections missing in the exhibit supplied in the text of paragraph 35, but the resolution of evidentiary objections should await trial. Should Chinn disagree with the allegations of paragraph 35, he may deny them in his answer.

### **Exhibit G**

Exhibit G is a consent order entered into by Chinn and FICC with the State of Minnesota, Commissioner of Commerce, in which Chinn and FICC were ordered to pay restitution to six policy holders in the total amount of \$153,050.50; Chinn was ordered to pay a civil penalty in the amount of \$75,000, which was stayed on the condition that he and FICC paid the specified restitution by a stated deadline; the civil penalty, if due and not paid, was to be excepted from discharge in the event that Chinn filed a bankruptcy petition; and Chinn and FICC were ordered to pay all investigative costs related to the matter. Exhibit G is the order described in paragraph 35 of the Amended Complaint. It clearly is material in that Chinn and FICC waived their right to a hearing on allegations that they maintained improper supervision over employees and/or producers; issued unauthorized and/or misleading insurance policy illustrations and estimates; and promoted unsuitable policies in violation of Minnesota law. With respect to this exhibit, Chinn objects only that it relates to settlement discussions. The Sixth Circuit permits the introduction of a prior civil consent judgment as a personal admission pursuant to Federal Rule of Evidence 801(d)(2)(A). *United States v. Cohen*, 946 F.2d 430, 435 (6th Cir. 1991). As Minnesota Life points out, the consent order signed by Chinn does not represent the settlement of a disputed claim.

Nowhere in the consent order does Chinn deny liability. To the contrary, the consent judgment is an admission of liability to avoid the necessity and expense of a formal hearing. The consent order is material and relevant as an admission with respect to the allegations of the Amended Complaint.

### **Exhibits H and I**

Exhibits H and I are consent orders entered into with the Minnesota Department of Commerce by David P. Buss and Larry G. Lalim, persons identified in Exhibit F and in paragraph 35 of the Amended Complaint as insurance agents who were involved in the sale of the life insurance policy that resulted in the complaint to the Minnesota Department of Commerce. Again Chinn argues only that the consent orders should be excluded because they were entered into as compromise and settlement agreements. The consent orders with respect to Buss and Lalim are one step removed from Chinn, but they are material to allegations in the Amended Complaint that Chinn furthered his fraudulent scheme through FICC employees, agents, and marketing representatives. Paragraph 35 alleges that “[t]he state of Minnesota determined that Chinn, along with Larry Lalim, David Buss, and Nathen Moen, were involved in the sale of insurance and premium financing with regard to this policyholder, as well as others.” If this statement is incorrect, Chinn may deny it in his answer. Denial of the motion to strike at this stage is not tantamount to admission of the consent judgments into evidence at trial, but there is no reason to exclude them at the pleading stage where they are intended to put Chinn on notice of the claims against him.

### **Exhibit K**

Exhibit K is an agreed final order entered into between Chinn and the Insurance Division of the Tennessee State Department of Commerce and Insurance. Chinn argues that this exhibit should be stricken on the basis that it relates to compromise and settlement agreements. This order

contains explicit findings of fact with respect to the activities of Chinn related to insurance producers he employed or contracted with. The order specifies, “[w]hile Respondent was not the agent at the point of sale in Minnesota for these policies, he has accepted responsibility for the actions of his employees and contractors given that Respondent was listed as the writing agent on all six (6) of the applications for the policies referred to in the Minnesota Consent Order.” Amended Complaint, Adv. Proc. Dkt. No. 53, Exh. K. The Tennessee order resulted from the failure of Chinn to report to the Tennessee Commissioner the administrative action taken against him in Minnesota. In the order, Chinn conceded that the Tennessee Commissioner’s interpretations of the statutes related to his activities were reasonable and enforceable and agreed to the imposition of sanctions by the Tennessee Commissioner. This consent order was not the result of a disputed claim but includes an admission of wrongdoing by Chinn that is material and relevant to the allegations of the Amended Complaint. As a result of the entry of the agreed final order, Chinn’s insurance producer license was suspended for six months and he was assessed a civil penalty in the amount of \$7,500. Moreover, he was ordered to cease and desist from selling any 100% premium financed life insurance policies to individuals residing in the state of Tennessee. Like Exhibit F, Exhibit K appears to be an admission which could be introduced pursuant to Federal Rule of Evidence 801(d)(2)(A). There is no reason to strike the exhibit at the pleading stage.

### **Exhibits B and C and Paragraph 26**

Chinn asks that Exhibits B and C and paragraph 26 of the Amended Complaint be stricken because they refer to other complaints filed against Chinn by other insurance companies containing similar allegations of fraud. Paragraph 26 alleges:

Chinn had previously perfected his scheme through the sale of policies issued by other carriers for several years prior to the sale of the Policies issued by Minnesota

Life, by making the same type of false representation. Prior to filing his Petition, Chinn was sued by other carriers for misconduct. (See, e.g., Exhibits B and C).

Chinn argues that this paragraph and the exhibits should be stricken because they “are hearsay and are unrelated to the Minnesota Life policies which are the subject of this adversary proceeding.” Chinn also says that the “[a]llegations of other lawsuits between other insurance carriers and Chinn are not pertinent or material to whether Chinn’s debt to Minnesota Life should be excepted from discharge.” Motion to Strike, Adv. Proc. Dkt. No. 61, p. 5.

Minnesota Life responds that these and other exhibits were attached to the Amended Complaint “to make clear the nature of Chinn’s fraudulent, willful and malicious conduct and to provide fair notice to Chinn of Minnesota Life’s allegations in compliance with Fed. R. Civ. P. 8(a)(2) and Fed. R. Civ. P. 9(b).” Response to Motion to Strike, Adv. Proc. Dkt. No. 77, p. 3. It says that in addition to showing immateriality or impertinence, Chinn must also show prejudice, which is difficult since this proceeding will be tried without a jury.

Minnesota Life has included paragraph 26 and the related exhibits in the Amended Complaint in part to provide further illustration of the alleged fraudulent scheme undertaken by Chinn. The allegations are material and pertinent for that purpose. Chinn might respond to the allegation in any number of ways. He might, for example, deny the allegation that he made similar false representations to other carriers. He might explain that he was sued but vindicated in the other proceedings. When the question before the court is whether the debtor was involved in a fraudulent scheme, an allegation that his actions with respect to one creditor are similar to those taken toward other creditors are clearly material and pertinent. Chinn’s hearsay objection is an evidentiary objection, which is not appropriate at the pleadings stage.

### **Exhibit D and Paragraph 29**

Chinn asks that Exhibit D and the allegations of paragraph 29 be stricken because there is no allegation that the marketing materials which comprise Exhibit D were actually used by Chinn and FICC with respect to policyholders that are the subject of the Amended Complaint. Chinn argues that the absence of this allegation makes the exhibit immaterial and impertinent.

Minnesota Life responds that the false marketing materials are both material and pertinent “because they (a) relate to Chinn’s overall fraudulent, willful, and malicious scheme which he used with regard to insurers including, but not limited to Minnesota Life and (b) show that Chinn was using unauthorized and false marketing materials as part of his sales practice.” Response to Motion to Strike, Adv. Proc. Dkt. No. 77, p. 15. It also notes that Chinn’s argument is an evidentiary one that should not be resolved in the context of the motion to strike.

Minnesota Life is correct. The allegedly false marketing materials clearly are material and pertinent to the allegations that Chinn engaged in an overall scheme directed at inducing persons to obtain life insurance policies using false representations. Moreover, the actual connection between these materials and the policyholders identified in the Amended Complaint is best sorted out in the context of trial.

### **CONCLUSION**

For the foregoing reasons, the Motion to Strike Pertinent Portions of Amended Complaint is **DENIED**.

cc: Debtor/Defendant  
Attorneys for Debtor/Defendant  
Plaintiff  
Attorneys for Plaintiff  
Chapter 7 Trustee