

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WESTERN WORLD INSURANCE  
COMPANY,

Plaintiff,

v.

NARCONON OF GEORGIA, INC.,  
NARCONON INTERNATIONAL,  
PATRICK C. DESMOND AND MARY  
C. DESMOND, INDIVIDUALLY,  
AND MARY C. DESMOND, AS  
ADMINISTRATRIX OF THE ESTATE  
OF PATRICK W. DESMOND, AND  
NONPROFITS' INSURANCE  
ALLIANCE OF CALIFORNIA,

Defendants.

CIVIL ACTION

FILE NO. 1:12-cv-2117-AT

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND  
COMPLAINT**

COMES NOW, Plaintiff Western World Insurance Company ("Western World") in the above-captioned case, and file this, its Brief in Support of Plaintiff's Motion to Amend Complaint, and would show the Court as follows:

**I. Factual Background**

This is an action for declaratory judgment wherein Western World, in part, seeks a declaration and determination, that various claims and counts asserted in an underlying state court action against Narconon of Georgia, Inc. ("Narconon

of Georgia”), Narconon International are not covered under a Western World Policy issued to Narconon of Georgia, which also names Narconon International as an additional insured. (*See* Document 32, pp. 5-8.) Western World also seeks a declaration and determination that Nonprofits’ Insurance Alliance of California (“NIAC”) policy of commercial liability insurance issued to Narconon International obligates it to provide coverage and a defense to Narconon International and other covered persons and entities for all allegations against Narconon International in the underlying state court action. (*See* Document 32, pp. 5-8.)

The initial Complaint for Declaratory Judgment was filed in this matter on June 20, 2012. (Document 1.) Subsequently, on November 1, 2012, by consent of the opposing parties, Western World filed its First Amendment to Complaint for Declaratory Judgment which added Nonprofits’ Insurance Alliance of California (“NIAC”) as a defendant and alleged claims against it related to insurance coverage which it provides to Narconon International. (Document 32.) Since that time, significant events have occurred which necessitate that Western World file a second amendment. Those events are as follows:

1. By order of the court in the underlying action it has been found, in part, that, Narconon of Georgia, “repeatedly failed to produce, and on multiple occasions falsely denied the existence of, clearly relevant, responsive documents

and information.” (See Order, dated November 5, 2012, p. 3; a copy of which is attached to the proposed Second Amendment to Complaint for Declaratory Judgment as Exhibit 1 and incorporated herein by reference.) Ultimately, the judge in the underlying state court action ordered Narconon of Georgia’s Answer to Plaintiff’s first Complaint stricken. (See Order, dated November 5, 2012, p. 10);

2. The plaintiffs in the underlying action have circulated, but not filed, a draft Second Amended Complaint (the “Draft Second Amended Complaint”) regarding the underlying state court action. The Draft Second Amended Complaint sets forth additional predicate acts to the state court plaintiff’s Georgia RICO claims, but does not allege any new counts.

Accordingly, Western World seeks to file its Second Amendment to Complaint for Declaratory Judgment in order to obtain a declaration and determination regarding the claims and acts set forth in the Draft Second Amended Complaint. Western World also seeks to file the Second Amendment to Complaint for Declaratory Judgment in order to obtain a declaration and determination that Western World is not obligated under its insurance policy to provide coverage or a defense to Narconon of Georgia due to Narconon of Georgia’s failure to comply with the condition that it cooperate in the defense of the Underlying Action.

## **II. Citation of Authority and Argument.**

### **A. Standard for Granting Leave to Amend.**

Under Federal Rule of Civil Procedure 15, “a party may amend its pleadings only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. Proc. R. 15(a)(2). The Supreme Court of the United States has concluded, “that this mandate is to be heeded.” Forman v. Davis, 371 U.S. 178, 182 (1962). “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test claims on the merits.” Id.

Leave to amend should be granted unless a substantial reason exists for denying it. Haliburton & Assoc., Inc. v. Henderson Few & Co., 774 F.2d 441, 443 (11<sup>th</sup> Cir. 1985). “Permission may be denied where leave would cause undue delay or prejudice to the opposing party, where prior amendments have failed to cure deficiencies, or if the motive of the amendment is dilatory. Id. None of the circumstances supporting denial of leave to amend are present in the instant matter.

**1. Undue Delay and Prejudice**

Allowing amendment to Plaintiff’s Complaint for Declaratory Judgment will not cause any undue delay or prejudice the opposing parties. Discovery is open and does not close under the Court’s minute order of November 19, 2012, until March 26, 2013. Defendants can claim no plausible undue delay or prejudice from this proposed amendment.

**2. Prior Amendments Have Failed to Cure Deficiencies.**

Both the Draft Second Amended Complaint and the Order striking Narconon of Georgia's answer in the underlying action were received after Western World's First Amendment to Complaint for Declaratory Judgment was filed. Accordingly, Western World could not have cured these deficiencies by and through its First Amendment to Complaint for Declaratory Judgment.

**3. Dilatory Motive.**

Plaintiff has no dilatory motive in amending its Complaint. The amendment simply reflects additional claims and acts that have come to light during the pendency of this action. Plaintiff is not requesting any delay or changes along with this motion to amend.

Respectfully submitted, this 8<sup>th</sup> day of January, 2013.

s/STEPHEN G. SMITH, JR.

Georgia Bar No. 795287

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2013, I electronically filed the foregoing **BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND COMPLAINT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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**FONT CERTIFICATION**

THIS IS TO CERTIFY that, pursuant to LR 5.1B, NDGa., the above document was prepared in Times New Roman, 14 pt.

s/Stephen G. Smith, Jr.  
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