

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

SECURITY INSURANCE COMPANY OF	:
HARTFORD,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:01cv2198(PCD)
	:
TRUSTMARK INSURANCE COMPANY,	:
Defendant.	:

**RULINGS ON MOTION TO DISMISS, MOTION TO STAY AND MOTION FOR CONTEMPT**

Defendant moves to dismiss plaintiff's claim of unjust enrichment and to stay further action on the ruling granting plaintiff's application for prejudgment remedy and prejudgment disclosure of assets pending appeal or until such time as a ruling on the a second motion to dismiss issues. Plaintiff moves that defendant be found in contempt for failure to comply with the order requiring disclosure of assets. For the reasons set forth herein, the motions are **denied**.

**I. BACKGROUND**

On August 26, 2002, plaintiff's motion for Prejudgment Remedy and motion for Prejudgment Disclosure of Property and Assets were granted. Defendant was thereby ordered to disclose its assets within thirty days. On September 3, 2002, plaintiff filed a notice of appeal of the two rulings. On September 3, 2002, defendant's motion to dismiss, inter alia, plaintiff's claim of unjust enrichment was granted in part as to a separate count. On September 17, 2002, defendant filed a second motion to dismiss the count alleging unjust enrichment. On September 23, 2002, defendant filed the present motion to stay action on the rulings pending appeal or pending a ruling on the second motion to dismiss.

On September 26, 2002, plaintiff filed the present motion for contempt for failure to comply with the order to disclose assets.

## II. MOTION TO DISMISS

Defendant argues that its stipulation that “it will return the reinsurance premium in the event that [defendant’s] rescission of the reinsurance contract is upheld” renders plaintiff’s claim moot. The motion is denied.

### A. Standard

A case may be dismissed for lack of subject matter jurisdiction pursuant to FED. R. CIV. P. 12(b)(1) when a court lacks the statutory or constitutional power to adjudicate. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). A court may refer to evidence outside the pleadings in resolving a motion to dismiss for lack of subject matter jurisdiction. *Id.* Plaintiff has the burden of proving by a preponderance of evidence the existence of subject matter jurisdiction. *Id.*

### B. Discussion

Defendant contends that the mere modification of its stipulation from “will be required to return” to “will return” justifies granting of its motion to dismiss. As stated in the original ruling denying the motion to dismiss, “[a]s drafted, the stipulation may only be read as an agreement as to the amount of the benefit.” On consideration of the amended stipulation, the different choice of words does not render plaintiff’s claim moot.

Defendant stipulates that it holds plaintiff’s money in the form of premiums paid to it as part of the reinsurance agreement. The unjust enrichment claim contemplates that the reinsurance agreement may be found void *ab initio*, thus the unjust enrichment claim affords a basis on which to which to

reclaim premiums paid should the agreement be found unenforceable. As a matter of law, notwithstanding defendant's promise to the contrary, the promise does not preclude a claim of unjust enrichment.

The doctrine of unjust enrichment has been described as

essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another. . . . It is not necessary, in order to create an obligation to make restitution or to compensate, that the party unjustly enriched should have been guilty of any tortious or fraudulent act. The question is: Did he, to the detriment of someone else, obtain something of value to which he was not entitled?

*Franks v. Lockwood*, 146 Conn. 273, 278, 150 A.2d 215, 218 (1959).

In the present case, defendant will be in possession of more than \$50 million of plaintiff's money at the time of judgment should the reinsurance agreement be found unenforceable. Even if defendant were to hand plaintiff an amount equal to all premiums paid after judgment is rendered, plaintiff would nonetheless be in possession of those funds and have no claimed entitlement to possession until the funds transfer possession. Whether that transfer occurs two seconds or two years after judgment on the contract claim is rendered, defendant will have dominion over those funds without a right to do so. There is thus an active controversy insofar as defendant retains the value of premiums paid. The claim would, for example, be rendered moot if defendant were to transfer possession of the contested funds to plaintiff. Defendant may not, however, both deny plaintiff's use of money and claim that there is no active case or controversy as to the disposition of those funds. The fact that it admits that the money should or will be returned to plaintiff does not establish the absence of a case or controversy. *See Rosofsky v. Schweiker*, 523 F. Supp. 1180, 1186 (E.D.N.Y. 1981). The motion is denied.

III. MOTION TO STAY

Defendant seeks a stay of the order granting plaintiff's application for prejudgment remedies, without requiring that a bond be posted, arguing that its pending appeal justifies such a stay.<sup>1</sup> Plaintiff responds that the argument is without merit.

Defendant does not satisfy the statutory requirements for a stay. CONN. GEN. STAT. § 52-278d(c) provides that

If an application for a prejudgment remedy is granted and the defendant moves the court for a stay, the court may, if it determines justice so requires, stay such order if the defendant posts a bond, with surety, in a sum determined by such judge to be sufficient to indemnify the adverse party for any damage which may accrue as a result of such stay.

Defendant argues that it should not be required to post a bond and further argues no basis on which to conclude that justice requires a stay. Defendant argues that its failure to meet the requirements of the Connecticut statute pursuant to which the prejudgment remedy was awarded does not preclude a stay, as resort may be had to a court's inherent authority to control the management of cases within its docket. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 166, 81 L. Ed. 153 (1936). Although proscriptions on the exercise of inherent authority arise through acts of Congress, *see G. Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 652 (7th Cir. 1989), there is no basis on which to ignore state law in a diversity case absent a conflict with a federal right. *See Alyeska Pipeline Serv. v. Wilderness Soc'y*, 421 U.S. 240, 260 n.31, 95 S. Ct. 1612, 1622, 44 L. Ed. 2d 141 (1975) (stating rule specifically as to availability of attorney's fees). Defendant's invitation to so ignore the mandate of state law and embrace instead the Court's inherent authority is rejected as contrary to the accepted application of state law in diversity proceedings. The requirements of CONN.

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<sup>1</sup> Defendant also argues that the pending motion to dismiss justifies a stay. The denial of the motion obviates the need to consider the motion as a basis for a stay.

GEN. STAT. § 52-278d(c) will not be ignored simply because defendant finds compliance inconvenient or undesirable. The motion is denied.

#### IV. MOTION FOR CONTEMPT

Plaintiff argues that defendant failed to provide the ordered disclosure of its assets by the deadline set forth in the order. Defendant responds that plaintiff has not met its burden in proving contempt.

A party may be held in civil contempt when (1) the party fails to comply with a clear and unambiguous order, (2) such noncompliance is established by clear and convincing evidence, and (3) the party has not diligently attempted to comply in a reasonable manner. *N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1351 (2d Cir. 1989).

Defendant's argument that the date by which is was required to respond was other than thirty days from the date of the order is unavailing.<sup>2</sup> There is, however, some merit to defendant's argument that the order was not unambiguous. In light of the footnote reference to a concern that this Court may lack authority to order the attachment of property, it is possible that defendant was not entirely clear on the scope of disclosure required. In light of defendant's letter of September 26, 2002, providing disclosure of assets in Connecticut, albeit one day late, defendant's noncompliance may be attributable to the clarity of the order. Defendant therefore will not be held in contempt but is now required to disclose all assets specified in the August 26, 2002 ruling, wherever those assets may be found, within

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<sup>2</sup> Fed. R. Civ. P. 6(e) provides that "Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period." Defendant overlooks the fact that the order specified disclosure "within thirty (30) days of the date this order issues." The order issued on the day it was signed, August 26, 2002, and did not condition the tolling of that period on the date the ruling was served on defendant.

seven days of service of this ruling. The motion for contempt is denied.

## V. CONCLUSION

Defendant's motion to dismiss (Doc. 88) is **denied**. Defendant's motion to stay (Doc. 90) is **denied**. Plaintiff's motion for contempt (Doc. 93) is **denied**. Defendant's motion for expedited consideration (Doc. 89) is **denied as moot**.

SO ORDERED.

Dated at New Haven, Connecticut, November \_\_\_\_, 2002.

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Peter C. Dorsey  
United States District Judge