Not for Publication in West's Federal Reporter

United States Court of Appeals
For the First Circuit

No. 25-1282

NICHOLAS GALAKATOS,

Plaintiff, Appellant,

v.

MARSH & MCLENNAN COMPANIES, INC., d/b/a Marsh; MARSH & MCLENNAN AGENCY LLC, d/b/a Marsh; MARSH PRIVATE CLIENT SERVICES, d/b/a Marsh; MARSH LLC, d/b/a Marsh; MARSH USA, INC., d/b/a Marsh; MARSH DOES 1-99, d/b/a Marsh,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M. Gorton, U.S. District Judge]

Before

Montecalvo, Lipez, and Kayatta,
Circuit Judges.

David J. Farrell, Jr., with whom Farrell Smith O'Connell Aarsheim Aprans LLP was on brief, for appellant.

Jocelyn M. Sher, with whom Christopher J. St. Jeanos, Willkie Farr & Gallagher LLP, Joshua L. Solomon, and Pollack Solomon Duffy LLP were on brief, for appellees.

August 21, 2026

MONTECALVO, **Circuit Judge**. Nicholas Galakatos filed this lawsuit against Marsh & McLennan Companies, Inc., Marsh & McLennan Agency LLC, Marsh Private Client Services, Marsh LLC, Marsh USA, Inc., and other entities doing business as "Marsh" (collectively, "Marsh"). Galakatos asserted claims for breach of contract, negligence, and breach of fiduciary duty related to Marsh's alleged failure to procure adequate liability insurance for his assets. The district court dismissed all of the claims, finding that the complaint failed to state a claim for which relief could be granted, and Galakatos appealed to this court. For the reasons stated below, we affirm.

I. Background[1]

In 2006, Marsh began brokering insurance for Galakatos. Galakatos contracted with Marsh so that Marsh could "advise [him] on what insurance products were necessary to protect [Galakatos] and his assets both in the United States and Greece" and to "place and procure that insurance for [him]." At some point during their brokerage relationship, Marsh wrote to Galakatos, stating "[i]n order for Marsh to thoroughly and appropriately advise you and eliminate potential gaps in coverage, it is very important that all your property and liability exposures be identified and

[1] At this stage of the litigation, we take the facts from the complaint and draw all reasonable inferences in Galakatos's favor. See Holland v. Elevance Health, Inc., 171 F.4th 126, 129 n.2 (1st Cir. 2026).

disclosed to us, even those for which we may not be providing coverage." The complaint does not state when this communication happened.

On September 8, 2018, Galakatos's boat, Galani, which he had purchased in 2015, collided with another boat while serving as a monitor for a swimming race in Greece, resulting in personal injury and property damage claims against Galakatos. Marsh was notified of the collision and asked to give notice to the appropriate insurers. Prior to the collision, Marsh had placed and procured several insurance policies -- which Galakatos purchased for one-year terms -- that were active at the time of the collision, including: (1) $10 million excess liability insurance coverage "anywhere in the world" from American International Group ("AIG"), purchased February 1, 2018 (the "AIG policy"); (2) $10 million excess liability insurance coverage from Bankers Standard Insurance Co. ("Bankers"), purchased April 20, 2018 (the "Bankers policy"); and (3) third party liability and other marine insurance coverages for Galani, issued by Groupama and purchased May 14, 2018 (the "Galani Groupama policy").

On October 31, 2018, Marsh contacted Galakatos for an annual review of his insurance portfolio, although an annual review had not occurred "in over four years." The next day, Marsh again told Galakatos that "[i]n order for Marsh to thoroughly and appropriately advise you and eliminate potential gaps in the coverage, it is important that you tell us all your property and liability exposures, even those for which we may not be providing coverage."

AIG ultimately denied coverage related to the boat collision under its excess policy because that policy had not been added onto the Galani Groupama policy.[2]

Galakatos later settled the claims with those injured in the boating accident and incurred costs defending the claims. On April 29, 2024, Marsh advised Galakatos that Groupama would be settling his insurance claim under the Galani Groupama policy; however, the damages covered for personal injuries under that policy were capped at €50,000 per person. The €50,000 per person damages amount was less than the amount Galakatos had settled the claims for.

In May 2024, Galakatos filed this suit against Marsh, raising claims for breach of contract, negligence, and breach of fiduciary duty based on Marsh's alleged failure "to place and procure third party liability insurance for [Galani] for the 2018-2019 term up to $20 million in coverage" through primary and excess policies. In response to the complaint, Marsh moved to

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[2] Although the complaint lists the Bankers policy as active at the time, Galakatos stated in the complaint that he "does not know the status of his Bankers excess policy." He also is unaware of any other excess insurance policies that would provide coverage here.

dismiss, asserting that Galakatos failed to sufficiently plead a cause of action and that the claims should be dismissed or transferred based on the forum-selection clause in an agreement between the parties that Marsh filed with the motion. Galakatos opposed the motion and moved to strike documents filed in support of the motion to dismiss.

The district court granted Marsh's motion to dismiss and denied Galakatos's motion to strike as moot. It noted that the parties disagreed about whether New York or Massachusetts law applied but did not resolve the issue, finding that there was no material distinction between the two with respect to this dispute. As to the breach of contract claim, the district court held that Galakatos failed to "allege any specific provision of the purported agreement between [Galakatos] and [Marsh] that [Marsh] allegedly breached," which was fatal to his claim. And, as to Galakatos's negligence claim, the court found that it was "deficient because he does not allege that [Marsh] was duty-bound to procure insurance in the manner [Galakatos] asserts." Lastly, the district court held that the breach of fiduciary duty claim similarly failed because Galakatos "d[id] not adequately allege a fiduciary relationship existed between him and [Marsh]," focusing on the lack of explanation about "how or why [the parties'] relationship was longstanding, how [Marsh] held [itself] out as [Galakatos]'s advisor[,] or whether consideration was paid for insurance advice."

Galakatos filed a timely notice of appeal challenging the district court's decision on the motion to dismiss and the motion to strike. We address each of Galakatos's claims in turn.

II. Discussion

A. Motion to Dismiss

We review the granting of a motion to dismiss for failure to state a claim de novo. Holland v. Elevance Health, Inc., 171 F.4th 126, 130 (1st Cir. 2026). In examining the complaint, "we must accept as true all well-pleaded facts, indulging all reasonable inferences in [a]ppellant's favor." Id. (cleaned up) (quoting Rae v. Woburn Pub. Schs., 113 F.4th 86, 98 (1st Cir. 2024), cert. denied, 145 S. Ct. 1431 (2025)). "Our review 'requires that we separate factual allegations from conclusory ones and then evaluate whether the factual allegations support a reasonable inference that the defendant is liable for the misconduct alleged.'" United States ex rel. Flanagan v. Fresenius Med. Care Holdings, Inc., 142 F.4th 25, 34 (1st Cir. 2025) (quoting United States ex rel. Zotos v. Town of Hingham, 98 F.4th 339, 343 (1st Cir. 2024)).

1. Breach of Contract

On the face of the complaint, Massachusetts contract law applies in this diversity action.[3] See Brooks v. AIG SunAmerica Life Assurance Co., 480 F.3d 579, 586 (1st Cir. 2007). "[T]o state a viable breach of contract claim under Massachusetts law, [a] plaintiff[] must prove that a valid, binding contract existed, the defendant breached the terms of the contract, and the plaintiff[] sustained damages as a result of the breach." Id. The plaintiff must also "explain what obligations were imposed on each of the parties by the alleged contract." Buck v. Am. Airlines, Inc., 476 F.3d 29, 38 (1st Cir. 2007) (quoting Doyle v. Hasbro, Inc., 103 F.3d 186, 195 (1st Cir. 1996)). This means conclusory allegations that a party breached a contract will not pass muster. Instead, the complaint must "describe, with substantial certainty, the specific contractual promise the defendant failed to keep." Alicea v. Machete Music, 744 F.3d 773, 783 (1st Cir. 2014) (cleaned up) (quoting Brooks, 480 F.3d at 586).

[3] Although Marsh argued in the district court that New York law applied and filed documents with its motion to dismiss to support that assertion, Marsh's briefing before us focuses only on Massachusetts law (although it explicitly does not concede such law applies). Because the parties' arguments before us and the complaint itself only point to the application of Massachusetts law and the dispositive issues can be resolved under that law, we apply Massachusetts law without deciding whether those additional documents call for the application of New York law or whether they can be considered at this stage of the litigation.

To succeed on his breach of contract claim, Galakatos must allege that a valid contract exists. But all Galakatos points to is Marsh's undated statement that "[i]n order for Marsh to thoroughly and appropriately advise you and eliminate potential gaps in coverage, it is very important that all your property and liability exposures be identified and disclosed to us." He then argues that this statement both establishes the existence of a contract and that Marsh was obligated under that contract to eliminate excess gaps in coverage once Galakatos told Marsh about his ownership of Galani in May 2018. We agree with the district court that Marsh's statement is insufficient to establish contractual obligations.

"A valid contract exists where all the essential terms are '_definite and certain_ so that the intention of the parties may be discovered, the nature and extent of their obligations ascertained, and their rights determined.'" _Gattineri_ v. _Wynn MA, LLC_, 63 F.4th 71, 85 (1st Cir. 2023) (quoting _Cygan_ v. _Megathlin_, 96 N.E.2d 702, 703 (Mass. 1951)). The complaint does not specify when the statement was made nor how long the alleged obligation continued. _See_ _Doyle_, 103 F.3d at 195 (finding the complaint failed to allege the nature of a contract with any specificity as "[t]here [was] no presentation of the terms of a contract, its duration, or even when it was formed"). The undated statement also does not include any obligatory language, such as stating that Marsh "will" or "shall" do anything upon receiving the necessary information. Although the complaint later states that "Marsh breached its contract with [Galakatos] to place and procure adequate third party liability insurance for [Galani] for the 2018-2019 term up to $20 million in coverage by combination of primary and excess policies," that statement is unsupported by any facts indicating that Marsh had an obligation to procure such coverage during that time period. The complaint simply does not assert a promise that Marsh allegedly breached.

Accordingly, we affirm the dismissal of the breach of contract claim.

2. Negligence

Under Massachusetts law, "[b]rokers have a duty to obtain insurance coverage that their client asks them for, but [brokers] cannot be liable for failing to procure insurance when there was no intelligible request for [them] to do so." Masonic Temple Ass'n of Quincy, Inc. v. Patel, 185 N.E.3d 888, 898-99 (Mass. 2022) (citation omitted). Under typical circumstances, brokers are not expected to act "proactive[ly]" in procuring insurance. See id. at 899.

Galakatos argues that Marsh owed him a legal duty to eliminate excess gaps in coverage once he informed Marsh of his ownership of Galani. However, the complaint merely states that Galakatos "had identified and disclosed" Galani without alleging any insurance requests related to that identification. Just because Marsh asked for certain information "to thoroughly and appropriately advise [Galakatos] and eliminate potential gaps in coverage" does not mean that Galakatos requested Marsh do so once he informed Marsh of Galani's existence. Accordingly, Galakatos has not alleged that he "requested relevant insurance" or that Marsh "ever promised [him] to obtain such insurance." See id. at 900. Thus, we affirm the dismissal of the negligence claim.

3. Breach of Fiduciary Duty

An insurance agent may take on a "greater duty of investigation, advice, and assistance to an insured" when "special circumstances" exist between the agent and the insured. Perreault v. AIS Affinity Ins. Agency of New Eng., Inc., 107 N.E.3d 1222, 1226 (Mass. App. Ct. 2018) (quoting in the second instance McCue v. Prudential Ins. Co. of Am., 358 N.E.2d 799, 802 (Mass. 1976)). This more expanded relationship, which, in turn, imposes a fiduciary duty on the agent, will exist "when the agent holds [them]self out as an insurance specialist, consultant[,] or counselor and is receiving compensation for consultation and advice apart from premiums paid by the assured." Baldwin Crane & Equip. Corp. v. Riley & Reilly Ins. Agency, Inc., 687 N.E.2d 1267, 1269-70 (Mass. App. Ct. 1997) (quoting Sandbulte v. Farm Bureau Mut. Ins. Co., 343 N.W.2d 457, 464 (Iowa 1984)). But other factors can also create special circumstances indicating an expanded fiduciary relationship including:

> (1) a prolonged business relationship; (2) the complexity and comprehensiveness of the customer's coverages; (3) the frequency of contact between a customer and agent to attend to the customer's insurance needs; and (4) the extent to which a customer relies on the advice of the agent by reason of the complexity of the policies.

Perreault, 107 N.E.3d at 1227.

Galakatos again asserts that once he informed Marsh of his ownership of Galani, Marsh had a fiduciary duty to eliminate gaps based on Marsh's undated statement that formed the basis of Galakatos's claims here. Galakatos also asserts that Marsh held itself out as his insurance advisor by stating that it would "thoroughly and appropriately advise [him]" and eliminate gaps in coverage and that he relied on Marsh's advice. But for the reasons described in the breach of contract and negligence discussions, Marsh's statement -- that "[i]n order for Marsh to thoroughly and appropriately advise you . . . it is very important that all your property and liability exposures be identified and disclosed to us" -- did not amount to an assurance or promise for Marsh to do anything. And although the complaint alleges that Galakatos relied on Marsh's "advice," Galakatos does not point to any specific instance of advice. In particular, Galakatos does not identify any advice that Marsh provided related to Galani or the insurance coverage that would be needed for the boat. Instead, without explanation, he merely recounts the insurance policies that Marsh procured for Galakatos. The circumstances leading to the procurement of these policies are not explained, and no reasonable inferences can be made about these circumstances from the bare-bones complaint. Further, although Galakatos was Marsh's client for over a decade, Galakatos has not alleged that his insurance needs were particularly complex, that he paid additional funds for Marsh's advice or any other services beyond simple insurance brokerage, or that he spoke with Marsh with any frequency. To the contrary, he alleges that the 2018 communication about an annual review was the first time he received a communication about a review in over four years, and he does not describe any other communications beyond those discussed herein.

For these reasons, Galakatos has not alleged a special circumstance that would establish Marsh's fiduciary duty. Accordingly, we affirm the dismissal of the claim for breach of fiduciary duty.

B. Motion to Strike

The materials submitted alongside the motion to dismiss that Galakatos moved to strike have no bearing on our decision dismissing the complaint. See Buck, 476 F.3d at 38 (finding the exhibits attached to the motion to dismiss did not bear on the dispositive issue). For this reason, we affirm the district court's conclusion that the motion to strike is moot and should be denied without prejudice.

III. Conclusion

For the foregoing reasons, we **affirm** the district court's order granting the motion to dismiss and denying the motion to strike.