

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JERRY R. PETERS,)	
Plaintiff)	Case No. 7:05cv00264
)	
v.)	<u>MEMORANDUM OPINION & ORDER</u>
)	
JOHN ALDEN LIFE INS. CO.)	
and)	By: Samuel G. Wilson
FORTIS INSURANCE CO.,)	United States District Judge
Defendants)	

This is an action brought under the court’s diversity jurisdiction, seeking damages from the defendants, John Alden Life Insurance Company (“John Alden”) and its affiliate Fortis Insurance Company (“Fortis”) for the allegedly wrongful rescission of the plaintiff’s health insurance policy. John Alden filed a counterclaim seeking a declaratory judgment that Peters’ insurance policy was void ab initio and unenforceable. The matter is before the court on Peters’ motion to dismiss the counterclaim. The court finds no basis for dismissal and denies Peters’ motion.

Peters claims that John Alden, through its affiliate and agent Fortis, unlawfully denied him insurance coverage following hip replacement surgery. In their counterclaim, John Alden claims that Peters made material misrepresentations on his enrollment form for health insurance coverage with John Alden. As a result, John Alden sought to reform its coverage or, if Peters would not agree to reformation, rescind coverage back to its effective date. John Alden contends that, as a result of these alleged material misrepresentations, the insurance policy is void and unenforceable.

In his motion to dismiss the counterclaim, Peters argues that “there is no need or purpose served” by John Alden’s declaratory judgment action because resolution of Peter’s complaint would

necessarily determine whether the policy was valid and enforceable or void and unenforceable.

However, the court finds no basis under Rule 12(b) for dismissal of John Alden's counterclaim.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that plaintiff's motion to dismiss is

DENIED.

ENTER: This ____ day of July 2005.

UNITED STATES DISTRICT JUDGE