

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PACIFIC INSURANCE CO., et al.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
GREEN SPRING HEALTH, et al.,	:	
Defendants.	:	NO. 00-0798

MEMORANDUM AND ORDER

Schiller, J.

January 17, 2001

This declaratory judgment action arises out of a class action filed in the Pennsylvania Court of Common Pleas. Plaintiffs Pacific Insurance Company (“Pacific”) and Continental Insurance Company (“Continental”) seek a judgment that they owe no duty to indemnify their insureds for any punitive damages assessed against them in connection with the underlying class action. Before this court is Defendant Harold Katlin’s Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. For the reasons set forth below, I grant the Motion and decline to exercise jurisdiction.

I. The Underlying Class Action

On June 23, 1997, Harold Katlin commenced an action, individually and on behalf of those similarly situated, in the Court of Common Pleas of Philadelphia County. Katlin is seeking damages allegedly resulting from psychiatric treatment undergone at the Bustleton Guidance Center.

In 1996, Katlin sought referral to a licensed psychiatrist through his insurer, Keystone Health Plan East (“Keystone”). Keystone referred Katlin to the Bustleton Guidance Center. At the health center, Katlin was referred to David Tremoglie, an employee of Bustleton, who was represented by the health center to be a physician licensed to practice medicine in the Commonwealth of Pennsylvania. Katlin began treatment with Tremoglie for a major depressive disorder for which Tremoglie prescribed powerful medication on a regular basis. While under Tremoglie’s care, Katlin’s condition deteriorated and he became extremely depressed. Tremoglie eventually recommended that Katlin be admitted to a psychiatric hospital. Katlin later learned that Tremoglie was not a psychiatrist licensed to practice in the Commonwealth of Pennsylvania. Katlin brought suit and named as defendants Tremoglie, Keystone Health Plan East, and Green Spring Health Services and a number of its affiliates, the operators of the Bustleton Guidance Center.

The underlying class action has been proceeding in the Court of Common Pleas in Philadelphia County since 1997. Extensive pre-certification motion practice has occurred. On June 19, 1999, Judge Stephen E. Levin certified a class on an opt-in basis for economic, nominal and punitive damages. Since class certification, Judge Levin has overseen notice to the class members and discovery has progressed.

II. The Present Action for Declaratory Judgment

Pacific and Continental, the insurers of Green Spring Health Services, have filed this action under the Declaratory Judgment Act, 28 U.S.C. § 2201, seeking a declaration that they owe no duty to indemnify Green Spring Health Services for punitive damages in the underlying

class action.¹ Under the Declaratory Judgment Act, a district court's jurisdiction over the subject matter of the action is purely discretionary. See Terra Nova Ins. Co. Ltd. v. 900 Bar, Inc., 887 F.2d 1213, 1222 (3d Cir. 1989). The discretion vested in district courts by the act exists "even when the action otherwise satisfies subject matter jurisdictional prerequisites." Wilton v. Seven Falls Co., 515 U.S. 277, 282, 115 S.Ct. 2137, 2140 (1995).

In determining whether jurisdiction should be exercised over a declaratory judgment action, district courts look at factors such as (1) whether the state and federal suits present the same issues; (2) whether the state court is better able to settle the controversy, including the existence of novel state law issues; (3) the adequacy and reach of the state court proceedings; (4) the obligation to discourage duplicative and piecemeal litigation; and (5) how far each proceeding has advanced. See Princeton Ins. v. Crudo, 1995 WL 222025, at *1. (E.D.Pa. 1994)(citing Brillhart v. Excess Ins. Co., 316 U.S. 491, 495 (1942)); Great Atlantic & Pacific Tea Company v. Adelco Sales & Service, Inc., 1994 WL 702873 (E.D.Pa. 1994).

Application of the Brillhart factors counsels against entertaining jurisdiction over this action for declaratory judgment. First, there is no reason the issue of punitive damages cannot be decided by the Court of Common Pleas. Judge Levin has certified the class for punitive damages,

¹The Declaratory Judgment Act states:

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a).

among other things. The class action has been ongoing for well over two years. While this action for declaratory judgment requests relief technically different from the relief sought in the underlying class action, it is inevitable that the coverage issues before this court will arise in the action in the Court of Common Pleas. Refraining from exercising jurisdiction will enable the claims before this court to be “resolved efficiently in the context of the state proceedings.” See Continental Cas. Co. v. Fuscardo, 35 F.3d 963, 968 (4th Cir. 1994).

The court’s obligation to “discourage duplicative and piecemeal litigation” also favors dismissal of this action. See Brillhart, 316 U.S. at 495. “Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties.” Id. By declining to exercise jurisdiction, piecemeal, double-forum litigation can be avoided and the comprehensive resolution of the questions in controversy can be accomplished by the Court of Common Pleas. See Greenspan & Gaber, P.C. v. Coregis Ins. Co., 1997 WL 746180, at *1 (E.D. Pa.).

An Order follows.

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ORDER

AND NOW, this 17th day of January, 2001, it is ORDERED that:

1. Upon consideration of the motion of defendant Harold Katlin to dismiss Plaintiffs' Complaint (docket number 15-1), and Plaintiffs' response thereto, Defendant's Motion is hereby GRANTED. Plaintiffs' complaint is hereby DISMISSED without prejudice to re-file the action in state court.
2. All other motions are hereby DENIED as MOOT.

BY THE COURT:

Schiller, J.