

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

<b>SHARON RINKENBACH and</b>	:	<b>CIVIL ACTION</b>
<b>MICHAEL GRAUER,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>NO. 07-0870</b>
	:	
<b>v.</b>	:	
	:	
<b>STATE AUTO INSURANCE COMPANY,</b>	:	
	:	
<b>Defendant.</b>	:	

**MEMORANDUM AND ORDER**

**Stengel, J.**

**May 4, 2007**

This is a declaratory action concerning an automobile insurance policy. The plaintiffs filed their complaint in state court. Defendant removed it on the basis of diversity jurisdiction and plaintiffs moved to remand the case to state court. For the reasons discussed below, I will decline to exercise federal jurisdiction over the case and grant the motion to remand.

**I. BACKGROUND**

On March 30, 2006, plaintiff Michael Grauer sustained personal injuries in a motor vehicle accident in Berks County. At the time of the accident, Grauer was an additional insured under his wife Sharon Rinkenbach's policy. Defendant State Auto Proper and Casualty Insurance Company's<sup>1</sup> paid Grauer \$30,000 in underinsured motorist

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<sup>1</sup> Defendant's name is incorrectly listed as State Auto Insurance Company on plaintiffs' complaint.

benefits. Plaintiffs allege that they are entitled to a larger payment, because Rinkenbach purchased bodily injury coverage of \$100,000 per person and \$300,000 per accident.

On February 7, 2007, plaintiffs Rinkenbach and Grauer filed a complaint in the Court of Common Pleas of Berks County seeking declaratory relief that defendant failed to comply with the Pennsylvania Motor Vehicle Financial Responsibility Law 75 PA. CONS. STAT. ANN. § 1734. On March 2, 2007, defendant removed the case to this court pursuant to 28 U.S.C. §§ 1332(a) and 1441(a). Defendant is an Iowa corporation with its principal place of business in Ohio. Plaintiffs are citizens of Pennsylvania. Defendant asserts that this court has diversity jurisdiction because the parties are citizens of different states and the amount in controversy exceeds \$75,000. On March 22, 2007, plaintiffs moved the court to remand the case.

## **II. STANDARD FOR MOTION TO REMAND**

Defendants in state court actions have a statutory right to remove “any civil action brought in a state court of which the district courts of the United States have original jurisdiction . . . to the district court . . . embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Federal district courts have original (subject matter) jurisdiction over all civil actions between citizens of different states when the amount in controversy exceeds \$75,000.00, excluding interest and costs. See 28 U.S.C. § 1332(a). Complete diversity between all plaintiffs and defendants is required to remove a case on the basis of diversity jurisdiction. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996);

Strawbridge v. Curtiss, 7 U.S. 267, 267–68 (1806).

The process for removal is governed by 28 U.S.C. § 1446. Removal statutes are “strictly construed against removal and all doubts should be resolved in favor of remand.” Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992) (quotation and citation omitted). The defendant bears the burden of establishing removal jurisdiction and demonstrating compliance with all pertinent procedural requirements. Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1991). If a federal court determines that it does not have subject matter jurisdiction over a removed action, the court must remand the action to state court. See 28 U.S.C. § 1447(c); Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995).

### **III. DISCUSSION**

#### **A. The court has diversity jurisdiction over this dispute.**

Both parties agree that this case solely involves issues of state law. Therefore, diversity jurisdiction is the only appropriate basis for federal subject matter jurisdiction. Plaintiffs contend that pursuant to 28 U.S.C. § 1332(c)(1), defendant is deemed a citizen of the insured’s state of residence, which destroys diversity jurisdiction. Defendant argues that this subsection does not apply to a declaratory action by an insured against its insurer.

Section 1332(c)(1) provides that for the purposes of diversity jurisdiction and removal:

a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, *except that in any direct action* against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, *such insurer shall be deemed a citizen of the State of which the insured is a citizen*, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business. (emphasis added)

The Third Circuit has explained that “a direct action, as that term is used in § 1332(c), does not exist unless the cause of action against the insurance company is of such a nature that the liability sought to be imposed could be imposed against the insured.”

McGlinchey v. Hartford Acci. & Indem. Co., 866 F.2d 651, 653 (3d Cir. 1989) (citing

Myers v. State Farm Insurance Co., 842 F.2d 705, 707 (3d Cir. 1988) (quotations

omitted). Therefore, as in this case, “when an insured, as the injured party, brings suit

against his insurer, no direct action could be found because the insurer’s status is not that

of a payor of a judgment based on the negligence of one of its insureds.” Id. (quotation

omitted). Since the parties are diverse and the amount in controversy exceeds \$75,000,

the court has subject matter jurisdiction over the case.

**B. The court will decline to exercise jurisdiction over the plaintiffs’ claim for declaratory relief.**

A federal court sitting in diversity must apply federal rules to a request for a

declaratory judgment. Munich Welding, Inc. v. Great Am. Ins. Co., 415 F. Supp.2d 571

(W.D. Pa. 2006) (citing Federal Kemper Ins. Co. v. Rauscher, 807 F.2d 345, 352 (3d Cir.

1986). The federal Declaratory Judgment Act provides that districts “*may* declare the

rights and other legal relations of any interested party seeking such declaration...”. 28 U.S.C. § 2201 (emphasis added). This provision grants discretion to a district court to refuse to exercise jurisdiction over a request for declaratory relief in some cases, even if the court otherwise has subject matter jurisdiction over the dispute. Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995); Unionamerica Ins. Co. v. Nufab Corp., 30 Fed. Appx. 30, 33 (3d Cir. 2002); State Auto Ins. Co. v. Summy, 234 F.3d 131, 134 (3d Cir. 2001) (noting that in declaratory judgment actions “Congress has afforded the federal courts a freedom not present in ordinary diversity suits to consider the state interest in having the state courts determine questions of state law.” Id. at 135.). The Third Circuit has expressly adopted this rule where district courts are asked to hear declaratory judgments involving insurance coverage issues, noting that “[t]he desire of insurance companies and their insureds to receive declarations in federal court on matters of purely state law has no special call on the federal forum.” Summy, 234 F.3d at 136.

District courts do not have discretion to decline jurisdiction where issues include “federal statutory interpretation, the government’s choice of a federal forum, an issue of sovereign immunity, or inadequacy of the state proceeding.” Id. at 134. In other instances, courts should weigh the following considerations: “[a] general policy of restraint when the same issues are pending in a state court; [a]n inherent conflict of interest between an insurer’s duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion; [and a]voidance

of duplicative litigation.” Summy, 234 F.3d at 134. Courts should also hesitate to exercise jurisdiction where state law is unsettled, id.; where state law is firmly established, id. at 136; or where no federal interests are implicated in the case. Id. A plaintiff’s objection to a district court’s exercise of jurisdiction is an additional factor in determining whether to decline jurisdiction. Munich Welding, Inc., 415 F. Supp.2d at 576, Nationwide Mut. Ins. Co. v. Yungwirth, No. 04-1681, 2005 U.S. Dist. LEXIS 28130, at \*6 (W.D. Pa. Nov. 16, 2005).

It is well-settled that district courts should decline to exercise jurisdiction over a declaratory action where there is a pending parallel proceeding in state court. Summy, 234 F.3d 131; Alea London Ltd. v. El Pailon, Inc., No. 05-4902, 2007 U.S. Dist. LEXIS 17736 (E.D. Pa. Mar. 13, 2007) (declining to exercise federal jurisdiction in declaratory action when there were two pending state court actions); Essex Ins. Co. v. Gilbert Weinberger, Inc., No. 07-180, 2007 U.S. Dist. LEXIS 7713 (M.D. Pa. Feb. 2, 2007) (dismissing declaratory action *sua sponte* where there was a pending state court case); Munich Welding, Inc., 415 F. Supp. 571 (dismissing federal declaratory judgment action when there was a related action pending in state court against the insurer).

Several courts have found federal jurisdiction improper even without a parallel state court case. While Wilton and Summy counsel that a parallel state court proceeding is one factor in favor of declining to exercise jurisdiction in declaratory judgment actions, the lack of a related state court proceeding is not determinative, particularly

when there is no federal interest in adjudicating the state law dispute. The Hartford v. Keystone Auto. Operations, No. 06-465, 2007 U.S. Dist. LEXIS 5818, at \*6-8 (M.D. Pa. Jan. 29, 2007); Nationwide Mut. Ins. Co. v. Svitesic, No. 05-0369, 2005 U.S. Dist. LEXIS 28127, at \*4-7 (W.D. Pa. Nov. 16, 2005); Yungwirth, 2005 U.S. Dist. LEXIS 28130, at \*4-6; Allstate Ins. Co. v. Seelye, 198 F. Supp.2d 629, 631-32 (W.D. Pa. 2002).

Even though there is no parallel state court proceeding in this case, the court has discretion to decline to exercise jurisdiction since there is no federal interest in this case. Defendant removed this dispute, which both parties concede focuses exclusively on a state statute, the Pennsylvania Motor Vehicle Financial Responsibility law, to federal court on the basis of diversity. The state law the court must apply to this dispute is well settled. The Hartford, 2007 U.S. Dist. LEXIS 5818, at \*8 (noting that state law requirements to evaluate the validity of underinsured motorist rejection forms are well settled). Additionally, plaintiff objects to federal jurisdiction and has moved the court to remand the case. These factors give this court discretion to remand the case.

#### **IV. CONCLUSION**

Even though there is not a parallel case pending in state court, there is no federal interest in this case since it arises entirely under well-settled state law and the plaintiff objects to federal jurisdiction. Therefore, I will decline to exercise jurisdiction and remand the case to state court.

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<b>STATE AUTO INSURANCE COMPANY,</b>	:	
	:	
<b>Defendant.</b>	:	

**ORDER**

**AND NOW**, this 4<sup>th</sup> day of May, 2007, upon consideration of Plaintiffs' Motion to Remand (Document No. 4) and defendant's response thereto, it is hereby **ORDERED** that the motion is **GRANTED** and the case is **DISMISSED** and **REMANDED** to the Court of Common Pleas of Berks County.

The Clerk of Courts is directed to mark this case closed for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.