

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

SCOTTSDALE INS. CO.,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	NO. 08-3241
WALTER T. BROADDUS, et al.,	:	
Defendants.	:	

Diamond, J.

February 11, 2009

MEMORANDUM

Plaintiff, Scottsdale Insurance Company, asks me to declare that it is not obligated to defend and indemnify its insured, Safecare Ambulance Services, in a pending state court negligence action. I decline to exercise jurisdiction over this matter.

I. BACKGROUND

On February 1, 2006, employees of Defendants Medical Transportation Management and Safecare allegedly dropped Eleanor Broaddus while carrying her down the front steps of her home in a wheelchair. (Doc. No. 1 ¶ 21; Ex. B. ¶ 9.) Mrs. Broaddus sustained severe injuries and died on February 6, 2006. (Doc. No. 1 ¶ 21; Ex. B ¶ 9.) On March 23, 2006, Scottsdale -- Safecare's commercial liability insurer -- disclaimed coverage with respect to the Broaddus accident. (Doc. No. 1 ¶ 23.) On September 7, 2006, Scottsdale reconsidered, offering to defend Safecare under a reservation of rights. (Id. ¶ 26; Ex. D.) On June 2, 2008, Mrs. Broaddus' husband, Walter, acting as administrator of her estate, brought a negligence action in the Philadelphia Common Pleas Court against Safecare and MTM. (Id. Ex. B.)

Invoking diversity jurisdiction, on July 10, 2008, Scottsdale filed the instant action under the Pennsylvania Declaratory Judgments Act, asking me to rule that it has no duty to defend or indemnify Safecare in the pending negligence case. Doc. No. 1; 28 U.S.C. § 1332(a); 42 Pa. Con. Stat. § 7531 et seq. Scottsdale named as Defendants Safecare, MTM, Walter Broaddus, and United States Fire Insurance Company (Safecare's automobile liability carrier). After Safecare and MTM failed to plead or otherwise respond to the Complaint, the Clerk of Court entered defaults against them on October 27, 2008. Scottsdale moved for default judgment against Safecare and MTM on November 17, 2008. (Doc. Nos. 14, 18.)

On December 2, 2008, I ordered the Parties to brief whether the Court should decline to exercise jurisdiction over this action. Doc. No. 21; see State Auto Ins. Co. v. Summy, 234 F.3d 131, 134 (3d Cir. 2000) (district court abused its discretion when it exercised jurisdiction over a declaratory judgment action where a parallel declaratory action and a related tort action were pending in state court). I also denied Plaintiff's Motions for Default Judgment without prejudice. Scottsdale and USF have submitted briefs in support of my exercising jurisdiction; Mr. Broaddus has submitted a brief in opposition. (Doc. Nos. 22, 23, 24.)

II. LEGAL STANDARDS

As the Third Circuit has explained, "it is settled law that, as a procedural remedy, the federal rules respecting declaratory judgment apply in diversity cases." Fed. Kemper Ins. Co. v. Rauscher, 807 F.2d 345, 352 (3d Cir. 1986). Accordingly, my authority to exercise jurisdiction in this declaratory judgment action is governed by the federal Declaratory Judgment Act, which provides:

In a case of actual controversy within its jurisdiction, . . . 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

28 U.S.C. § 2201(a) (emphasis supplied). District courts have the discretion not to hear declaratory judgment actions brought under this provision. See, e.g., Wilton v. Seven Falls Co., 515 U.S. 277, 282, 287 (1995) (the Declaratory Judgment Act “is an enabling act, which confers discretion on the courts rather than an absolute right on a litigant”) (quotations omitted). The Third Circuit has cautioned, however, that district courts do not have “open-ended discretion to decline jurisdiction over a declaratory action when the issues include[] federal statutory interpretation, the government’s choice of a federal forum, an issue of sovereign immunity, or inadequacy of the state proceeding.” State Auto Ins. Cos. v. Summy, 234 F.3d 131, 134 (3d Cir. 2000) (citing United States v. Dep’t of Env’tl. Res., 923 F.2d 1071, 1075 (3d Cir. 1995)).

The Supreme Court has ruled that in the absence of these discretion-limiting factors, the district court should determine

whether the question in controversy between the parties to the federal suit . . . can better be settled in the proceedings pending in state court. . . . Naturally, this requires some inquiry into the scope of the state court proceeding, the nature of the defenses available there, and whether the claims of all parties of interest can satisfactorily be adjudicated in that proceeding.

Summy, 234 F.3d at 133 (citing Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 495 (1942)) (quotations and citations omitted).

The Third Circuit has set out additional criteria respecting the district court’s exercise of discretion:

(1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy; (2) the convenience of the parties; (3) the public interest in settlement of the uncertainty of the obligation; and (4) the availability and relative convenience of other remedies.

United States v. Dep't. of Env'tl. Res., 923 F.2d 1071, 1075 (3d Cir. 1991).

In cases involving questions of insurance coverage, the Third Circuit has offered three additional considerations:

(1) A general policy of restraint when the same issues are pending in state court; (2) An inherent conflict of interest between an insurer's duty to defend in state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion; (3) Avoidance of duplicative litigation.

See Summy, 234 F.3d at 134 (citing Dep't. of Env'tl. Res., 923 F.2d at 1075).

Finally, the Summy Court cautioned against "exercising jurisdiction over declaratory judgment actions where the state law involved is close or unsettled." Id. at 135. Rather, "district courts should give serious consideration to the fact that they do not establish state law, but are limited to predicting it. *This is especially important in insurance coverage cases. . . .*" Id. (emphasis supplied).

III. DISCUSSION

A. The Court's Discretion to Decline Jurisdiction

Scottsdale and USF argue first that I must exercise jurisdiction in the absence of a "true" parallel proceeding pending in state court. They note that they are not parties to the Broadus state court suit, which, in any event, will result only in a determination of whether Safecare

employees were negligent, not whether Scottsdale must afford coverage to Safecare. (Doc. No. 22 at 8; Doc. No. 23 at 7.) Scottsdale and USF thus argue that “[t]his case does not fall within the ambit of Summy as the state court action is not a parallel declaratory judgment action” (Doc. No. 22 at 14; see also Doc. No. 23 at 2.)

I disagree. The Summy Court did not make the pendency of identical state and federal declaratory actions a prerequisite to declining federal jurisdiction. Indeed, certain of the Summy factors -- such as the “inherent conflict of interest between an insurer’s duty to defend in state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion” -- contemplate a related state tort action, not a declaratory judgment action. Summy, 234 F.3d at 134. Moreover, applying the Summy factors, a panel of the Third Circuit has affirmed the dismissal of a declaratory action respecting insurance coverage when only a related tort action was pending in state court -- the circumstances presented here. See Atlantic Mut. Ins. Co. v. Gula, 84 Fed. Appx. 173, 175 (3d Cir. 2003).

Several courts in this Circuit have also concluded that under Summy, they may decline jurisdiction over a declaratory action in the absence of a pending state court declaratory action. See, e.g., United Fin. Cas. Co. v. Fornataro, No. 08-1301, 2008 WL 4283347, at *2 (W.D. Pa. Sept. 18, 2008) (“A fair reading of Summy indicates that the existence of a parallel state proceeding, although present there, is not a prerequisite to the district court’s proper exercise of discretion to decline jurisdiction over the case. Rather, it is but one factor a district court should consider.”); see also Rickenbach v. State Auto Ins. Co., No. 07-870, 2007 WL 1314889, *3 (E.D.Pa. May 4, 2007); The Hartford v. Keystone Auto. Ops., No. 06-465, 2007 WL 257915, at

*2 (M.D. Pa. Jan. 29, 2007); Empire Fire & Marine Ins. Co. v. Bennett, No. 05-4097, 2006 WL 932176, at *3 (D.N.J. Apr. 10, 2006).

Other Circuits have similarly reasoned that requiring the exercise of federal jurisdiction over a declaratory action in the absence of an identical state proceeding is inconsistent with the broad discretion the Declaratory Judgment Act confers. Scottsdale Ins. Co. v. Detco Indus., Inc., 426 F.3d 994, 999 (8th Cir. 2005); Sherwin-Williams Co. v. Holmes County, 343 F.3d 383, 394 (5th Cir. 2003); United States v. City of Las Cruces, 289 F.3d 1170, 1182 (10th Cir. 2002); Scottsdale Ins. Co. v. Rounph, 211 F.3d 964, 967 (6th Cir. 2000); Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co., 139 F.3d 419, 423 (4th Cir. 1998); Golden Eagle Ins. Co. v. Travelers Cos., 103 F.3d 750, 754 (9th Cir. 1996). As the Fifth Circuit has explained:

[A] *per se* rule requiring a district court to hear a declaratory judgment action is inconsistent with the discretionary Brillhart and Wilton standard. . . . The lack of a pending parallel state proceeding should not automatically require a district court to decide a declaratory judgment action, just as the presence of a related state proceeding does not automatically require a district court to dismiss a federal declaratory judgment action.

Sherwin-Williams, 343 F.3d at 394.

USF nonetheless argues that in the absence of a parallel state court proceeding, principles of abstention require me to exercise jurisdiction over this matter. Doc. No. 23 at 11-15; see, e.g., Coregis Ins. Co. v. Wheeler, No. 97-7941, 1998 WL 430129 (E.D. Pa. July 24, 1998); Certain Underwriters at Lloyds, London v. Ross, No. 98-1037, 1998 WL 372304 (E.D. Pa. June 17, 1998). USF has confused abstention with the discretion not to hear a declaratory judgment action.

In the absence of a parallel state proceeding or exceptional circumstances, the district court may not abstain from hearing a non-declaratory case. See Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976); Interconsult, AG v. Safeguard Intern. Partners, 438 F.3d 298, 306 (3d Cir. 2006) (“The threshold requirement for a district court to even entertain abstention is a contemporaneous parallel judicial proceeding.”). The Third Circuit has explained, however, there is an “important distinction between cases in which a federal district judge stays a case because of parallel state court proceedings and declaratory judgment cases which, because of their purely remedial and equitable nature, vest the district court with discretion.” Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213, 1229 (3d Cir. 1989) (quotations omitted). Accordingly, both the Third Circuit and the Supreme Court have stressed that “Colorado River . . . [does] not limit the traditional discretion of district courts to decide whether to hear declaratory judgment cases.” Id. at 1223; see also Wilton, 515 U.S. at 288-290 (rejecting the Colorado River “exceptional circumstances” test as inappropriate in declaratory actions). Rather, “[i]n the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.” Wilton, 515 U.S. at 288.

A number of Circuits have limited the discretion to decline jurisdiction over a declaratory action in the absence of a parallel state proceeding. See, e.g., Scottsdale, 426 F.3d at 998. The factors these Circuits have applied, however, are quite similar to those adopted by the Third Circuit. For instance, the Fourth Circuit has held that in the absence of a parallel state court proceeding, district courts must consider the following factors before declining jurisdiction:

(1) whether the declaratory judgment sought “will serve a useful purpose in clarifying and settling the legal relations in issue”; (2) whether the declaratory judgment “will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the [federal] proceeding”; (3) “the strength of the state’s interest in having the issues raised in the federal declaratory judgment action decided in the state courts”; (4) “whether the issues raised in the federal action can more efficiently be resolved in the court in which the state action is pending”; (5) “whether permitting the federal action to go forward would result in unnecessary ‘entanglement’ between the federal and state court systems”; and (6) “whether the declaratory judgment action is being used merely as a device for ‘procedural fencing[.]’”

Aetna Cas. & Sur. Co., 139 F.3d at 422-23. The Sixth Circuit has held similarly. See Scottsdale, 211 F.3d at 968 (requiring consideration of: (1) “whether the judgment would settle the controversy”; (2) “whether the declaratory judgment action would serve a useful purpose in clarifying the legal relations at issue”; (3) “whether the declaratory remedy is being used merely for the purpose of ‘procedural fencing’ or ‘to provide an arena for a race for res judicata’”; (4) whether the action will “increase the friction between our federal and state courts and improperly encroach on state jurisdiction”; and (5) “whether there is an alternative remedy that is better or more effective”). Thus, district courts **in the Fourth and Sixth Circuits retain discretion** not to hear declaratory actions even in the absence of parallel state proceedings.

Plainly, I retain discretion under the Declaratory Judgment Act to decline jurisdiction over the instant case despite the absence of a parallel state court action. How I exercise that discretion will turn on my application of the criteria articulated by the Supreme Court and the Third Circuit.

B. Application of the Discretionary Factors

1. A General Policy of Restraint When the Same Issues are Pending in State Court

Scottsdale and USF argue that I may not apply this policy of restraint because coverage issues have not yet been raised in the negligence action. (Doc. No. 22 at 7; Doc. No. 23 at 6-7.) In similar circumstances, a panel of the Third Circuit rejected this argument, explaining that “even if the coverage issue is not currently pending, it will as a matter of logic necessarily arise before the matter is concluded in state court [garnishment proceedings].” Gula, 84 Fed. Appx. at 175; see also Golden Eagle Ins. Co. v. Travelers Cos., 103 F.3d 750, 754 (9th Cir. 1996) (“[N]othing in the Declaratory Judgment Act requires a parallel state proceeding in order for the district court to exercise its discretion . . . the potential for such a proceeding may suffice.”).

Under Pennsylvania law, “garnishment is a well-settled, viable remedy available to a judgment creditor to collect on a judgment from the judgment debtor’s insurer.” Butterfield v. Giutoli, 670 A.2d 646, 651 (Pa. Super. Ct. 1995). Moreover, the Gula Court emphasized that under Pennsylvania law, an insurer is entitled to raise the same coverage defenses in both declaratory judgment and garnishment proceedings. 84 Fed. Appx. at 175; see also Summy, 234 F.3d at 133 (district courts should consider the scope of the state court proceeding and the defenses available).

In these circumstances, the great likelihood that coverage issues will arise before the state court matter is concluded compels me to exercise “a general policy of restraint” over the exercise of jurisdiction here. Summy, 234 F.3d at 134.

2. The Convenience of the Parties and the Availability and Relative Convenience of Other Remedies

Scottsdale argues that if I decline jurisdiction, it will be forced to choose between two “inconvenient” options: (1) deny coverage immediately and possibly face a lawsuit for breach of contract; or (2) provide a defense, await the resolution of the state court action, “and seek recovery of attorney’s fees in the event that it was concluded that [Safecare’s] conduct is not covered.” (Doc. No. 22 at 14.)

Any “inconvenience” to Scottsdale is of its own making. Scottsdale could have sought declaratory relief in state court three years ago, when it declined coverage. See Gen. Accident Ins. Co. of Am. v. Allen, 692 A.2d 1089, 1096 (Pa. 1997) (“[T]he duty to defend *and* the duty to indemnify may be resolved in a declaratory judgment action [under the Pennsylvania Declaratory Judgments Act.]”) (emphasis in original); see also Harleysville Mut. Ins. Co. v. Madison, 609 A.2d 564, 566 (Pa. Super. 1992) (“[An insurance company] has [the] right to seek a judicial determination of its obligations to [its insured], including its duty to defend him, in advance of the conclusion of the negligence action.”). Indeed, it may seek such declaratory relief in state court now. Neither Scottsdale nor USF have explained why a declaratory judgment action in the Philadelphia Common Pleas Court would be less “convenient” than this federal action.

Accordingly, I conclude that the convenience of the Parties and the availability of another remedy weighs against exercising jurisdiction here.

3. Close or Unsettled State Law Questions

Contrary to the suggestions of Scottsdale and USF, the Pennsylvania law governing this dispute is far from clear. (Doc. No. 22 at 11.) Scottsdale bases its coverage disclaimer on two provisions in Safecare’s insurance policy: (1) the exclusion for injuries “arising out of the ownership, maintenance, use or entrustment to others” of any automobile (which defines “use” to include “loading and unloading”) (Doc. No. 1 ¶ 36-37, Ex. A); and (2) a “Designated Operations Exclusion” schedule that applies to injuries that occur during “Passenger Loading/Unloading” (Doc. No. 1 ¶ 34, Ex. A). Both provisions present unsettled legal questions.

Scottsdale contends that under the first exclusion, settled Pennsylvania law provides that Scottsdale is not required to indemnify Safecare if Mrs. Broaddus’ injuries arose from the “use” of the ambulance -- including the loading and unloading of the vehicle. Doc. No. 22 at 11; Doc. No. 1 at 9; Mfrs. Cas. Ins. Co. v. Goodville Mut. Cas. Co., 170 A.2d 571, 573 (1961) (“‘But for’ causation . . . is enough to satisfy [the automobile “use” exclusion] of the policy.”).

USF disagrees, arguing that under Pennsylvania law, “[t]o bring the [Broaddus] accident within the ‘loading and unloading’ clause of the policy . . . [t]he [ambulance] must have been directly connected with the work of loading” Presbyterian-Univ. of Penn. Med. Ctr. v. Keystone Ins. Co., 380 A.2d 381, 382-83 (Pa. Super. 1977) (citing Ferry v. Protective Indem. Co. of N.Y., 38 A.2d 493, 494 (Pa. 1944)); Doc. No. 23 at 7-11. Because Safecare’s ambulance apparently was not “directly connected” to the “loading” of Mrs. Broaddus, USF argues that under settled Pennsylvania law, Scottsdale is obligated to indemnify Safecare for the Broaddus accident. (Doc. No. 23 at 11.)

That Scottsdale and USF thus offer these absolutely contrary arguments respecting the policy's "loading and unloading" clause eloquently underscores that state law governing the clause is far from settled.

Scottsdale also relies on a provision that excludes coverage for injuries arising out of the operation of "Passenger Loading/Unloading." The policy does not define this operation as an extension of the "use" of an automobile, however. (Doc. No.1 ¶ 34, Ex. A.) Pennsylvania courts apparently have never considered or interpreted a "loading and unloading" clause that is not an extension of an automobile "use" clause. Cf. Keystone, 380 A.2d at 382. Moreover, Pennsylvania courts have not chosen between the competing doctrines of causation -- the "complete operations" doctrine or the "coming to rest" doctrine -- that apply to such a clause. See Scottsdale Ins. Co. v. Travelers Ins. Co., No. 94-6710, 1995 WL 517631, at *3 (E.D. Pa. Aug. 29, 1995) ("Pennsylvania has not adopted the 'complete operations' doctrine . . . or the 'coming to rest' doctrine also offered by Plaintiff."); Allstate Ins. Co. v. Sentry Ins., 563 F. Supp. 629, 634 (E.D. Pa. 1983) (same); see also Fed. Ins. Co. v. Mich. Mut. Liab. Co., 277 F.2d 442, 445 (3d Cir. 1960) ("there is no clear enunciation of which [of these doctrines] Pennsylvania would apply"). Under the "coming to rest" doctrine -- which Scottsdale implicitly urges me to reject here -- a "loading and unloading" exclusion applies only to "the actual removal or lifting of the cargo from the vehicle or its placement on it." Scottsdale, 1995 WL 517631, at *3 n.2. Under the "complete operations" doctrine -- which Scottsdale implicitly urges me to adopt -- a "loading and unloading" exclusion applies to "the complete operation of transporting the goods between the vehicle and the place from or to which they are being delivered." Id.

The causation doctrine I apply could well determine Scottsdale's coverage obligations. I may not resolve open questions of Pennsylvania law so critical to this case simply because Scottsdale or USF urges me to do so. As the Third Circuit has cautioned, "the state's interest in resolving its own law must not be given short shrift simply because one party or, indeed, both parties, perceive some advantage in the federal forum." Summy, 234 F.3d at 136. Accordingly, these unsettled state law questions weigh strongly against exercising federal jurisdiction here. See id. at 135 ("[W]here the applicable state law is uncertain or undetermined, district courts should be particularly reluctant to entertain declaratory judgment actions.").

4. Avoidance of Duplicative Litigation

My determination of Scottsdale's coverage obligations -- and my resolution of the attendant state law questions -- would seem necessarily to require the Parties to try before me a version of the state court negligence case. Scottsdale disagrees, arguing that in resolving the instant coverage dispute, there will be no need for a trial of any kind; rather, I would rely exclusively on the factual allegations in the state court complaint. (Doc. No. 22 at 12.) Scottsdale has confused its duty to defend Safecare with its duty to indemnify Safecare.

Under Pennsylvania law, an insurer's duty to defend is "fixed solely by the allegations in the underlying complaint." Erie Ins. Exchange v. Muff, 851 A.2d 919, 926 (Pa. Super. Ct. 2004).

An insurer has a duty to defend an insured if the underlying Complaint sets forth a claim that "may potentially" fall within the coverage provided by the policy. Lucker Mfg., Inc. v. The Home Ins. Co., 23 F.3d 808, 813 (3d Cir. 1994). Unlike the duty to defend, however,

the duty to indemnify cannot be determined merely on the basis of whether the

factual allegations of the complaint potentially state a claim against the insured. Rather, there must be a determination that the insurer's policy actually covers a claimed incident.

Am. States Ins. Co. v. State Auto Ins. Co., 721 A.2d 56, 63 (Pa. Super. Ct. 1998) (quotations omitted).

Accordingly, in determining Scottsdale's duty to indemnify, I must consider evidence relating to the Broaddus incident itself. See State Farm Fire & Cas. Co. v. Cooper, No. 00-5538, 2001 WL 1287574, at *4 (E.D. Pa. Oct. 24, 2001) (citing Am. States, 721 A.2d at 63). Given that the Parties appear to dispute facts critical to the coverage questions -- including where Mrs. Broaddus was dropped and whether she was leaving or returning to her home at the time -- the evidentiary presentation could well be substantial. See Doc. No. 1, Ex. D at 2. In these circumstances, to determine whether Scottsdale has a duty to indemnify Safecare, I must engage in the same factual inquiry that is central to the state court negligence action. This is exactly the kind of duplicative litigation district courts are encouraged to avoid. See Nationwide Mut. Fire Co. v. Shank, 951 F. Supp. 68, 71-72 (E.D. Pa. 1997) ("[T]he duty to indemnify need not, and sometimes should not be, be determined until the state court has evaluated the facts.") (citing Youngman v. CNA Ins. Co., 585 A.2d 511, 514 (Pa. Super. Ct. 1991)). Indeed, as the Summy Court explained, had the district court declined jurisdiction,

the state court would have been able to develop a coordinated schedule of briefing and discovery that would have promoted the efficient resolution of both the declaratory judgment action and the underlying tort action, thereby conserving judicial resources as well as those of the parties.

Summy, 234 F.3d at 135-36.

In sum, I conclude that the interest in avoiding duplicative litigation weighs strongly

against exercising jurisdiction over this action.

5. The Inherent Conflict of Interest Between An Insurer's Duty to Defend in State Court and Its Attempt to Characterize that Suit in Federal Court as Falling Within the Scope of a Policy Exclusion

This kind of conflict inevitably arises when “the same factual question lies at the heart of both an insurance coverage dispute and the underlying tort action.” Terra Nova, 887 F.2d at 1225 (quotations omitted). Scottsdale argues that no conflict exists because there are no such overlapping factual questions. (Doc. No. 22 at 7-8.) As I have explained, however, the same factual questions respecting the Broaddus accident are critical to both the negligence action and this declaratory action. The resulting conflict that Scottsdale has imposed on itself is unseemly and weighs heavily against exercising jurisdiction over this matter. Summy, 234 F.3d at 134.

6. The Likelihood that a Federal Court Declaration Will Resolve the Uncertainty of Obligation Which Gave Rise to the Controversy, and the Public Interest in Settlement of the Uncertainty of that Obligation

Although my decision here will likely determine whether Scottsdale has a duty to defend and indemnify Safecare, that alone does not convince me to exercise jurisdiction. Moreover, I do not see how the public interest is served by a federal court (rather than a state court) resolving the coverage questions Scottsdale has raised. See Summy, 234 F.3d at 136 (“The 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.”). Rather, this action presents “the all too common case of an insurance company coming to federal court, under diversity jurisdiction, to receive declarations on purely state law matters.” United Fin. Cas. Co. v. Fornataro, No. 08-1301, 2008

WL 4283347, at *1 (W.D. Pa. Sept. 18, 2008).

IV. CONCLUSION

None of the Summy Court’s discretion-limiting factors is present here. Moreover, virtually all the remaining criteria articulated by the Supreme Court and the Third Circuit weigh against my exercising jurisdiction here. Plainly, “the question in controversy between the parties to [this] suit . . . can better be settled in the proceedings pending in state court” Summy, 234 F.3d at 133 (citing Brillhart, 316 U.S. at 495). Accordingly, I decline to exercise jurisdiction and will dismiss this case.

An appropriate Order follows.

s/ Paul S. Diamond

PAUL S. DIAMOND, J.