

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

ACCESS INSURANCE COMPANY,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 11-2919
	:	
MARIA LOPEZ CARPIO,	:	
	:	
Defendant.	:	

April 0 , 2012

Anita B. Brody, J.

MEMORANDUM

On July 19, 2008, Defendant Maria Lopez Carpio’s car was involved in an accident with another car in which Chantel Wagman was a passenger.¹ At the time of the accident, Carpio had a private motor vehicle insurance policy issued by Plaintiff Access Insurance Company (“Access”). As a result of the accident, Chantel Wagman filed suit against Carpio in the Camden County Superior Court of New Jersey (“Wagman Litigation”). *See Wagman v. Carpio, et al.* (Civil Action No. L-3436-10). Access denies liability for any damages incurred by Carpio as a result of the accident because Carpio’s car was not covered by the policy. However, Access has provided Carpio with a defense in the Wagman Litigation under a reservation of rights.² Access

¹ The facts in this section are taken from the complaint.

² An insurer’s offer to defend an insured under a reservation of rights “is made at least as much for the insurer’s own benefit as for the insured’s.” *Terra Nova Ins. Co. Ltd. v. 900 Bar, Inc.*, 887 F.2d 1213, 1220 (3d Cir. 1989). Uncertain as to whether it will owe a duty to indemnify, an insurer offers a duty to defend under a reservation of rights “to avoid the risks that an inept or lackadaisical defense of the underlying action may expose it to . . . a duty to indemnify.” *Id.* at 1219. At the same time, a defense under a reservation of rights enables an

has filed a complaint for declaratory judgment against Carpio seeking a judicial determination that it has no duty to defend or indemnify Carpio in the Wagman Litigation or in any future litigation related to the accident. Wagman is not a party to this action, and Carpio has failed to enter an appearance. Currently pending before me is Access's motion to enter a default judgment. I am dismissing this case without ruling on Access's motion.

The Declaratory Judgment Act provides that in a case of actual controversy, a federal district court "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." 28 U.S.C. § 2201(a). "[T]he jurisdiction conferred by the Act [is] discretionary, and district courts [are] under no compulsion to exercise it." *State Auto Ins. Cos. v. Summy*, 234 F.3d 131, 133 (3d Cir. 2000) (citing *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494 (1942)). "In 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 v. Seven Falls Co.*, 515 U.S. 277, 288 (1995). The Third Circuit has explained:

In insurance cases, as in declaratory judgments in general, although both justiciability and federal jurisdiction are present, the court in a proper case may, nevertheless, refuse to proceed with the declaratory action for it is well settled that the exercise of jurisdiction in this area is discretionary. . . . And frequent, attempted abuses of the declaratory action in this area make the exercise of judicial discretion particularly important.

Terra Nova Ins. Co. Ltd. v. 900 Bar, Inc., 887 F.2d 1213, 1225 (3d Cir. 1989) (internal quotation marks omitted). "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." *Summy*,

insurer "to preserve its right to contest the duty to indemnify if the defense is unsuccessful." *Id.* at 1219-20.

234 F.3d at 136. Therefore,

[i]t follows that the state's interest in resolving its own law must not be given short shrift simply because one party. . . perceive[s] some advantage in the federal forum. When the state law is firmly established, there would seem to be even less reason for the parties to resort to federal courts. Unusual circumstances may occasionally justify such action but declaratory judgments in such cases should be rare.

Id.

Access asks that I determine issues of purely state law without the benefit of hearing from the alleged injured individual, Wagman, who would likely be the most affected by the grant of declaratory relief. The issues that Access asks me to consider are greatly influenced and impacted by the underlying state court tort action. Given that all of the parties are not present in this action and that it would be more efficient to have these state court issues addressed by the state court already considering related matters and, based on considerations of practicality and wise judicial administration, I decline to exercise jurisdiction over this declaratory judgment action.

Moreover, I am uncertain that this case is justiciable. Access represents, in both its complaint and motion for entry of default judgment, that the Wagman Litigation is currently pending. However, it appears from the docket sheet of the Wagman Litigation that the case was disposed of on March 4, 2011.³ When Access filed this action on May 2, 2011 the case had been closed for nearly two months. Additionally, the docket sheet indicates that the Wagman Litigation was dismissed without prejudice to any party and no judgment was entered.

³ The Court takes judicial notice of the docket sheet in *Wagman v. Carpio, et al.* (Civil Action No. L-3436-10). For the convenience of the parties, it has been appended to this Explanation and Order.

Article III of the Constitution limits the “judicial Power” of the federal courts to the resolution of “Cases” or “Controversies.” U.S. Const. art. III, § 2. “Courts enforce the case-or-controversy requirement through several justiciability doctrines that . . . include standing, ripeness, mootness, the political-question doctrine, and the prohibition on advisory opinions.” *Pittsburgh Mack Sales & Serv., Inc. v. Int’l Union of Operating Eng’rs, Local Union No. 66*, 580 F.3d 185, 190 (3d Cir. 2009) (citations omitted). “The availability of declaratory relief depends on whether there is a live dispute between the parties.” *Powell v. McCormack*, 395 U.S. 486, 517-18 (1969). “[A] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome. The court's ability to grant effective relief lies at the heart of the mootness doctrine.” *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003) (citations omitted) (internal quotation marks omitted).

The docket sheet for the Wagman Litigation reflects that no judgment was entered in favor of any party. To the extent Access seeks a declaration that it does not have to indemnify Carpio for any damages she owes as a result of the Wagman Litigation this issue is moot because there is no live case-or-controversy. Furthermore, Access’s request for a declaration that it has no duty to defend Carpio is moot because it has already provided Carpio with a defense in the Wagman Litigation under a reservation of rights. As explained by the Third Circuit, an insurer’s claim for a declaration that it has no duty to defend will be moot if it provides a defense under a reservation of rights to its insured and it is later determined that the insured did not owe a duty to defend to the insurer. *Terra Nova*, 887 F.2d 1219-20. This is because an insurer is not entitled

to recover any costs that it has expended in defending an insured under a reservation of rights.⁴ *Id.* at 1220. Without a remedy there is no right to relief. Therefore, Access has “no need for, and no right to, the declaratory relief it seeks in district court,” *id.*, because the Wagman Litigation has already concluded.

Access also seeks a declaration that it has no duty to defend or indemnify Carpio in any future litigation related to the accident. This too raises concerns as to whether there exists a live case-or-controversy based on the ripeness of this claim.

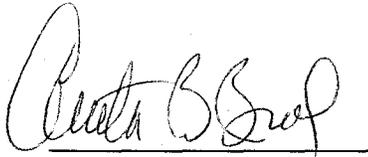
“The ripeness doctrine determines whether a party has brought an action prematurely, and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine.” *Pittsburgh Mack*, 580 F.3d at 190 (internal quotation marks omitted). “[T]he question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Step-Saver Data Sys., Inc. v. Wyse Tech.*, 912 F.2d 643, 647 (3d Cir. 1990) (quoting *Md. Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). One of the requirements for a claim to be ripe is the existence of adversity of interest between the parties. *Pittsburgh Mack*, 580 F.3d at 190. “[A] potential harm that is ‘contingent’ on a future event occurring will likely not satisfy this prong of the ripeness test.” *Id.* “Though a plaintiff need not suffer a *completed* harm to establish adversity of interest between the parties, to protect against a

⁴ “If the insurer could recover defense costs, the insured would be required to pay for the insurer’s action in protecting itself against the estoppel to deny coverage that would be implied if it undertook the defense without reservation. Accordingly, a declaration that there was no duty to defend will not entitle [an insurer] to recover any costs it has expended.” *Terra Nova*, 887 F.2d at 1220 (citations omitted).

feared future event, the plaintiff must demonstrate that the probability of that future event occurring is real and substantial, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.* (internal quotation marks omitted).

Without demonstrating or discussing the probability that any future lawsuit will occur, Access requests that the Court declare that it has no duty to defend or indemnify Carpio in any future lawsuit related to the accident. The potential harm that Access may suffer is not ripe for adjudication because it is not of “sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.*

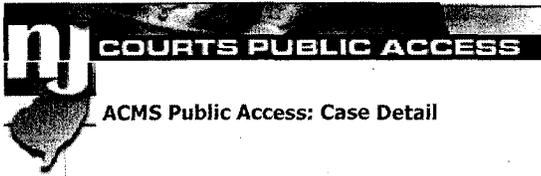
For all of the reasons discussed above, this action will be dismissed.⁵


ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to: Copies **MAILED** on _____ to:

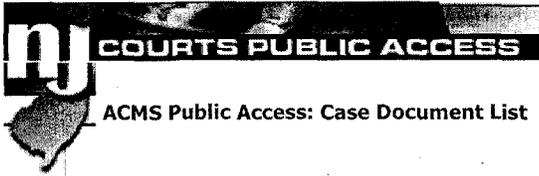
O:\ABB 2012\A - K\Access Insurance Co. v. Carpio Memorandum.wpd

⁵ A court may sua sponte dismiss a case because it declines to exercise jurisdiction over a declaratory judgment action. *See Summy*, 234 F.3d at 136. Likewise, a court may sua sponte dismiss a case on grounds of mootness or ripeness. *See Felmeister v. Office of Attorney Ethics, a Div. of the N.J. Admin. Office of the Courts*, 856 F.2d 529, 535 (3d Cir. 1988) (ripeness); *N.J. Tpk. Auth. v. Jersey Central Power and Light*, 772 F.2d 25, 30 n.10 (3d Cir. 1985) (mootness).



VENUE: CAMDEN		COURT: LAW CVL		DOCKET #: L 003436 10	
CASE TITLE : WAGMAN VS LOPEZ					
CASE FILED DATE	: 07 09 2010	CASE TYPE	: 603 AUTO NEG T	CASE INITIATION TYPE:	C COMPLAINT
CASE STATUS	: CLOSED	DATE DISPOSED	: 03 04 2011	ARGUMENT REQST DATE	: 00 00 0000
DISPOSITION TYPE	: DISMISSED	JUDGMENT ENTERED	: NO		
DISCOVERY DATE	:				
CASE PARTY COUNT	: 004				
FIRST ANSWER DATE	:	ACTUAL SERVICE DATE	:		
EXPECTD SERVICE DATE:		CONSOLIDATION STATUS:			
CONSOLIDATION TYPE	:	DATE TRANSFERRED OUT:			
TRANSFER FROM VENUE	: TO	LAST PROCEEDING DATE:	02 18 2011		
LAST PROCEEDING TYPE:	MOTION HRG	PENDING ACTION DATE	: 00 00 0000		
PENDING ACTION	:	DEMAND AMOUNT	: 0.00		
UNDISTRIBUTED AMOUNT:	0.00	DENOVO INDICATOR	: NO		
DF ATTORNEY/PRO SE	: NO DF HAS AN ATT				
CMP DISPUTE RESOLUTN:	AUTO ARBITRATION	TITLE 59 INDICATOR	: NO		
JURY REQUEST	: 6 JURORS	CASE IMPOUNDED	: NO		
DATE ENTERED	: 07 09 2010				

Screen ID:CVM1019 Copyrighted © 2008 - New Jersey Judiciary
 BUILD 2011.1.0.0.12



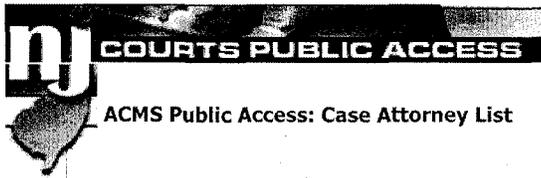
Page: 1

END OF LIST

VENUE : CAMDEN COURT : LAW CVL DOCKET #: L 003436 10
 CASE TITLE : WAGMAN VS LOPEZ

SEL	DATE FILED		DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME	MUL DOC PTY STA			
<input type="radio"/>	07	09	2010	001	COMP JRY	DEMAND	WAGMAN	LIEBLING &	M	N	
<input type="radio"/>	01	14	2011	002	MOTN SUB	SRVICE	WAGMAN	LIEBLING &	M	N	DN
<input type="radio"/>	02	18	2011	003	ORDR SUB	SRVICE	WAGMAN	LIEBLING &	M	N	DN
<input type="radio"/>	03	04	2011	004	CRT INIT	TO DSM	COURT INIT			N	GR

Screen ID:CVM1023 Copyrighted © 2008 - New Jersey Judiciary
 BUILD 2011.1.0.0.12



ACMS Public Access: Case Attorney List



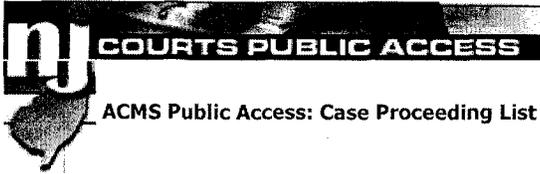
Page: 1

END OF LIST

VENUE : CAM	COURT : LCV	DOCKET # : L	003436	10
CASE TITLE : WAGMAN VS LOPEZ				

S	ATTY NUMBER	ATTORNEY NAME	AT TP	AT ST	SUBST DATE	P T	PARTY NAME		
C	8564241808	LIEBLING & MALA	L	21	R		PF	WAGMAN	C
		ATTY REQUIRED					DF	LOPEZ	C
		ATTY REQUIRED					DF	JOHN DOE 1-5	
		ATTY REQUIRED					DF	JANE DOE 1-5	

Screen ID:CVM1040 Copyrighted © 2008 - New Jersey Judiciary
 BUILD 2011.1.0.0.12



Page: 1

END OF LIST

VENUE : STATEWIDE		COURT : LAW CVL		DOCKET # : CAM L 003436 10			
CASE TITLE : WAGMAN VS LOPEZ							
PROCEEDING TYPE	MOTION DOC/TYPE	MOTION STATUS	SESSION DATE	COURT ROOM	PROCEED TIME	JUDGE ID	PROCEEDING STATUS BY:VIA:
MOTION HRG	2 M63	DENIED	02 18 11	54	09 00	RGM02	COMPLETED
MOTION HRG	2 M63		02 04 11	54	09 00	RGM02	RSCHED

Screen ID:CVM1036 Copyrighted © 2008 - New Jersey Judiciary
BUILD 2011.1.0.0.12



ACMS Public Access: Case Disposition Detail



END OF LIST

VENUE : CAMDEN	COURT : LAW CVL	DOCKET # : L 003436 10
CASE TITLE : WAGMAN VS LOPEZ		
SE DISP : DISMISSED	DISP DATE: 03 04 2011	CASE STATUS: CLOSED

PTY NO	PARTY NAME	PTY TYPE	PTY STATUS	DISP DATE
001	WAGMAN	CHANTEL T	PF DISM W/O P	03 04 2011
002	LOPEZ	CARPIO M	DF DISM W/O P	03 04 2011
003	JOHN DOE 1-5		DF DISM W/O P	03 04 2011
004	JANE DOE 1-5		DF DISM W/O P	03 04 2011

Screen ID:CVM1001 Copyrighted © 2008 - New Jersey Judiciary
BUILD 2011.1.0.0.12



VENUE : CAMDEN	COURT: LCV	DOCKET # : L 003436 10
CASE TITLE : WAGMAN VS LOPEZ		
CASE TYPE : AUTO NEGLIGENCE-TORT	# OF MOTIONS: 1	
CASE STATUS : CLOSED 03 04 2011	# OF PARTIES: 4	
CASE FILED : 07 09 2010	AGE OF CASE 0 YR 0 MO	OUT-OF-STATE:
JURY : 6 JURORS		
TRACK : 2	TEAM: 202	DISCOVERY COMPLETED:
DISCOVERY DAYS : 300	CDR INDICATOR : A	
DISCOVERY STARTS : 00 00 0000	ESTIMATED TRIAL : .00	
DISCOVERY ENDS : 00 00 0000	UNAVAILABLE DATES :	
ANTICIPATED TRIAL: 00 0000		
TEAM LEADER : SNYDER	PRETRIAL JUDGE : MILLENKY	
	FEE-SHF-IND : N	
LAST PROCEED: 02 18 2011	MOTION HRG 09:00	COMPLETED

Screen ID:CVM1560 Copyrighted © 2008 - New Jersey Judiciary
BUILD 2011.1.0.0.12

