

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

JOSE E. OLAZARRA

v.

THOMAS D. DeFULVIO and
CLASCARS, LTD.,
CRAIG W. SHAFFER, BRANDYWINE
HOSPITAL, INC., and the
PENNSYLVANIA STATE POLICE

CIVIL ACTION

NO. 97-7833

MEMORANDUM

Broderick, J.

August 26, 1998

Plaintiff Jose E. Olazarra ("Plaintiff") brings this action alleging that as a result of the negligence of the Defendants Thomas D. DeFulvio and Clascars, Ltd. (collectively "DeFulvio"), Defendants Craig W. Shaffer and Brandywine Hospital, Inc. (collectively "Shaffer"), and Defendant Pennsylvania State Police, he was injured in an automobile accident which allegedly occurred on January 19, 1996 in Chester County, Pennsylvania. Plaintiff's claims arise under state law, and this Court's jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C. § 1332.

Presently before the Court are motions to dismiss Plaintiff's Amended Complaint brought by Defendants DeFulvio, Shaffer, and the Pennsylvania State Police. Plaintiff has filed a single response to the motions brought by DeFulvio and Shaffer,

and DeFulvio has filed a reply to Plaintiff's response. Because the motions to dismiss brought by Defendants DeFulvio and Shaffer are almost identical, the Court will consider them together. For the reasons stated below, the motions to dismiss brought by Defendants DeFulvio and Shaffer will be denied. Plaintiff does not oppose the motion to dismiss brought by Defendant Pennsylvania State Police, and the motion will therefore be granted as uncontested.

DeFulvio's and Shaffer's Motions to Dismiss

Defendants DeFulvio and Shaffer first contend that Plaintiff's Amended Complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) because Plaintiff has instituted an almost identical action in the Court of Common Pleas of Chester County, Pennsylvania. Defendant DeFulvio also contends that he has instituted his own negligence action in the Court of Common Pleas of Chester County, arising out of the same incident alleged in this action, and Defendants DeFulvio and Shaffer claim that the two state court actions should and likely will be consolidated. Consequently, Defendants DeFulvio and Shaffer claim that the instant action must be dismissed.

In Colorado River Water Conservation District v. United States, the Supreme Court reaffirmed the century-old principle that "the pendency of an action in the state court is no bar to

proceedings concerning the same matter in the Federal court having jurisdiction," and the Supreme Court emphasized "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." 424 U.S. 800, 817 (1976)(internal quotation omitted); see also Ryan v. Johnson, 115 F.3d 193, 198 (3rd Cir. 1997). The Third Circuit has likewise recently noted that "[i]t is, of course, the general rule that the mere pendency of a similar action in a state court does not require, or even permit, a federal court to refuse to hear or to stay an action that is properly within its jurisdiction, and that both state and federal actions should go forward until one of them results in a judgment that may be asserted as res judicata in the other." NYLife Distributors v. Adherence Group, 72, F.3d 371, 376 (3rd Cir. 1995)(citing McClellan v. Carland, 217 U.S. 268, 281-82, 30 S.Ct. 501, 504-05, 54 L.Ed. 762 (1910)).

A district court may decline to exercise its jurisdiction where there is a parallel state action only under "exceptional" circumstances. Colorado River, 424 U.S. at 118. However, as the Third Circuit has made abundantly clear, the mere fact of concurrent state-federal litigation is not sufficiently "exceptional" to justify abstention, even where, as here, the litigation arises entirely under state law. Ryan, 115 F.3d at 198-200. Defendants DeFulvio and Shaffer have pointed to no circumstances, nor is this Court aware of any, which would

relieve the Court of its "unflagging obligation" to exercise its jurisdiction in this case. Therefore, Defendants' contention that Plaintiff's Amended Complaint should be dismissed because there is concurrent state court litigation is without merit.

Defendants DeFulvio and Shaffer also claim that Plaintiff's Amended Complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(7) because Plaintiff has failed to join two indispensable parties. Fed.R.Civ.P. 12(b)(7) provides for dismissal for failure to join a party in accordance with Fed.R.Civ.P. 19. "When faced with a motion under Rule 12(b)(7), the court will decide whether the absent person should be joined as a party. If it decides in the affirmative, the court will order the absentee brought into the action. However, if the absentee cannot be joined, the court must then determine, by balancing the guiding factors set forth in Rule 19(b), whether to proceed without him or to dismiss the action." Wright & Miller, Federal Practice and Procedure: Civil 2d § 1359.

Defendants DeFulvio and Shaffer claim that Plaintiff has failed to name two entities -- Plaintiff's employer, Pan Head Transport, Inc., and a paramedic unit, Medic 93 -- as defendants in the instant action. Defendants DeFulvio and Shaffer claim that Pan Head Transport, Inc. and Medic 93 may have contributed to the accident alleged in this action and should be joined. They further claim that these entities cannot be joined without

destroying diversity, and that the Court should therefore dismiss the action.

Defendants' claim is without merit. Defendants are essentially claiming that Pan Head Transport, Inc. and Medic 93 should be joined because they are joint tortfeasors, subject to joint and several liability. It is well-settled law that joint tortfeasors need not be joined under Rule 19. As the United States Supreme Court has noted, "[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit.... Nothing in the 1966 revision of Rule 19 changed that principle.... The Advisory Committee Notes to Rule 19(a) explicitly state that 'a tortfeasor with the usual "joint-and-several" liability is merely a permissive party to an action against another with like liability.'" Temple v. Synthes Corporation, 498 U.S. 5, 7, 111 S.Ct. 315, 316 (1990)(citations omitted). Therefore, Pan Head Transport and Medic 93 need not be joined by the Plaintiff merely because their negligence may have contributed to the accident alleged in this action, and Plaintiff's failure to join them cannot serve as grounds for dismissal of his Amended Complaint. However, joint tortfeasors can be joined by the Defendant without destroying diversity.

Defendant Pennsylvania State Police's Motion to Dismiss

Defendant Pennsylvania State Police has filed a motion to dismiss Plaintiff's Amended Complaint, and Plaintiff does not oppose Defendant Pennsylvania State Police's motion. Therefore, pursuant to the Local Rule 7.1 of the Local Rules of the United States District Court for the Eastern District of Pennsylvania, the Court will grant the motion as uncontested.

For the reasons stated above, the Court will deny the motions to dismiss brought by Defendants DeFulvio and Shaffer, and will grant the motion to dismiss brought by Defendant Pennsylvania State Police.

An appropriate Order follows.

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

JOSE E. OLAZARRA

v.

THOMAS D. DeFULVIO and
CLASCARS, LTD.,
CRAIG W. SHAFFER, BRANDYWINE
HOSPITAL, INC., and the
PENNSYLVANIA STATE POLICE

CIVIL ACTION

NO. 97-7833

ORDER

AND NOW, this 26th day of August, 1998; Defendants Thomas D. DeFulvio and Clascars, Ltd., having brought a motion to dismiss Plaintiff Jose E. Olazarra's Amended Complaint pursuant to Fed.R.Civ.P. 12(b)(6) and 12(b)(7); Defendants Craig W. Shaffer and Brandywine Hospital, Inc., having brought an almost identical motion to dismiss Plaintiff's Amended Complaint; Defendant Pennsylvania State Police having brought a motion to dismiss Plaintiff's Amended Complaint pursuant to Fed.R.Civ.P. 12(b)(1), 12(b)(2), and 12(b)(6); Plaintiff having filed a single response to the motions to dismiss brought by Defendants DeFulvio and Clascars, Ltd., and by Defendants Shaffer and Brandywine Hospital, Inc.; Defendants DeFulvio and Clascars, Ltd., having filed a reply to Plaintiff's response; Plaintiff having not opposed the motion to dismiss brought by Defendant Pennsylvania State Police; for the reasons stated in this Court's Memorandum

of this date;

IT IS ORDERED: The motion to dismiss Plaintiff's Amended Complaint brought by Defendants Thomas D. DeFulvio and Clascars, Ltd. pursuant to Fed.R.Civ.P. 12(b)(6) and 12(b)(7) is **DENIED**;

IT IS FURTHER ORDERED: The motion to dismiss Plaintiff's Amended Complaint brought by Defendants Craig A. Shaffer and Brandywine Hospital, Inc., is **DENIED**:

IT IS FURTHER ORDERED: The motion to dismiss Plaintiff's Amended Complaint brought by Defendant Pennsylvania State Police pursuant to Fed.R.Civ.P. 12(b)(1), 12(b)(2), and 12(b)(6) is **GRANTED** as uncontested.

RAYMOND J. BRODERICK, J.