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

THE OHIO CASUALTY INSURANCE CO.	:	**CIVIL ACTION**
	:	
v.	:	
	:	
LEIF G. HILLESLAND, et al.	:	**NO. 99-722**

MEMORANDUM ORDER

Plaintiff seeks a declaration that it owes no duty to defend or to indemnify defendant Leif Hillesland for claims arising out of an automobile accident on June 13, 1998. Presently before the court is the Motion of defendants Heather and John J. Mitos to Dismiss and for Sanctions Pursuant to Federal Rule Civil Procedure 11.

On June 13, 1998, while driving a car owned by George Hillesland and insured by plaintiff, Leif Hillesland collided with a car driven by Heather Mitos and owned by John J. Mitos. At all relevant times, plaintiff provided liability insurance for the car driven by Leif Hillesland. On November 20, 1998, Heather Mitos filed a tort action in the Bucks County Common Pleas Court against Leif and George Hillesland for injuries she received in the crash. On February 11, 1999, plaintiff filed this declaratory action alleging Leif Hillesland is excluded from coverage under the automobile liability policy because he was using the vehicle without a "reasonable belief" that he was entitled to do so.

Mr. and Mrs. Mitos assert that the court lacks subject matter jurisdiction because the parties are not of diverse citizenship and the amount in controversy is less than $75,000. It is uncontroverted that defendants Heather and John Mitos, Leif and George E. Hillesland and Brian Romanek are all citizens of Pennsylvania and that defendant Traveler's Insurance Company is incorporated under the law of Pennsylvania and has its principal place of business in Pennsylvania.

Mr. and Mrs. Mitos contend that plaintiff, for the purpose of diversity jurisdiction, is a citizen of Pennsylvania. A corporation is "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." See 28 U.S.C. § 1332(c)(1). It is uncontroverted that plaintiff is incorporated under the law of Ohio. Plaintiff alleges and has submitted an affidavit stating that its principal place of business is also in Ohio. Mr. and Mrs. Mitos do not contradict this averment, but argue that plaintiff is also a citizen of Pennsylvania because it is licensed to do business here. A corporation, however, is not a citizen of a state merely because it is licensed to do business in that state. See Grady v. Stoever, 968 F. Supp. 334, 335 (S.D. Tex. 1997) (registering to do business in Texas did not make corporation a citizen of Texas); Weekly v. Olin Corp., 681 F. Supp. 346, 347 n.1 (N.D.W. Va. 1987) (license to do business in a

state irrelevant to defendant corporation's citizenship); Sanders Co. Plumbing and Heating, Inc. v. B.B. Anderson Construction Co., 660 F. Supp. 752, 756 (D. Kan. 1987) ("mere fact that a corporation is doing business or is licensed to do business in a state does not make it a citizen of that state").

Plaintiff alleged in the complaint that the amount in controversy exceeds $75,000 and it does not appear to a legal certainty that the amount in controversy is less than $75,001. Mrs. Mitos's state court complaint against Leif Hillesland requests damages in "excess of $100,000" for allegedly permanent physical injuries and lost earning capacity of indefinite duration.

Mr. and Mrs. Mitos also argue incorrectly that there is no case or controversy between themselves and plaintiff. An actual case or controversy exists between a liability insurer and a party claiming injury due to the acts of the insured. See Maryland Cas. Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 274 (1941) (actual case or controversy existed in declaratory coverage action between insurer and state court plaintiff); Federal Kemper Ins. Co. v. Rauscher, 807 F.2d 345, 352 (3d Cir. 1986) (same).

Mr. and Mrs. Mitos finally contend that the court should decline to entertain plaintiff's request for declaratory relief. Declaratory relief is awarded at the discretion of the

court. In deciding whether to exercise such discretion, courts consider "(1) the likelihood that the declaration will resolve the uncertainty of obligation which gave rise to the controversy; (2) the convenience of the parties; (3) the public interest in a settlement of the uncertainty of obligation; and (4) the availability and relative convenience of other remedies." Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213, 1224 (3d Cir. 1989). In addition, courts look with disfavor upon efforts "to provide another forum in a race for res judicata." Id. at 1225.

None of these factors suggest that declaratory relief would be inappropriate. The requested declaration would completely resolve the coverage issue raised by plaintiff. All those with interest in the coverage dispute have been joined as parties in this action. It is unlikely that the coverage dispute could be resolved in the underlying tort action. See Stokes v. Loyal Order of Moose Lodge #696, 466 A.2d 1341, 1345 (Pa. 1983) (joinder of insurance coverage claim improper in tort liability action).

It does not appear that the instant suit is a "race for res judicata." Although resolution of this suit may involve factual issues also disputed in the state tort action, the key issue is distinct, i.e., whether Leif Hillesland is excluded from coverage because he was using the vehicle without a "reasonable belief" he was entitled to do so.

ACCORDINGLY, this day of June, 1999, upon consideration of the Motion of defendants Heather Mitos and John J. Mitos to Dismiss and for Sanctions Pursuant to Fed. R. Civ. P. 11 (Doc. #4), and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

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JAY C. WALDMAN, J.