

accident, Mr. Fishman was an employee of Cintas Corporation ("Cintas") and allegedly suffered injuries while driving a Cintas vehicle. The Cintas vehicle was insured by Lumbermans.

The Fishmans made a claim against the operator and owners of the other vehicle and their insurance carrier, Allstate Insurance Company ("Allstate"). Allstate tendered the \$50,000.00 liability limit of coverage to the Fishmans. The Fishmans then made a claim upon Lumbermans for recovery of underinsured motorists ("UIM") benefits under Cintas' insurance policy. Lumbermans denied the Fishmans' claim. Lumbermans thereafter filed suit against the Fishmans, seeking declaratory and injunctive relief. The Fishmans then filed a Petition to Compel Arbitration in the Court of Common Pleas of Philadelphia County to recover underinsured motorist benefits under the Cintas policy. Lumbermans filed a Motion for Removal. Upon grant of Lumbermans' Motion, the Fishmans filed the instant Motion to Remand. The Fishmans then filed the instant Motion to Dismiss under federal Rule of Civil Procedure 12(b)(1) on the basis that this Court lacks subject matter jurisdiction over this matter.

Additionally, this Court granted Lumbermans' unopposed Motion to Consolidate on May 4, 1999. Accordingly, this Court considers in this Memorandum Fishmans' motions for remand and dismissal and all relevant responsive pleadings to said motions.

II. DISCUSSION

The Court first decides the Fishmans' Motion to Remand for

this decision affects this Court's jurisdiction over other pending matters in this action, including the Fishmans' Motion to Dismiss.

A. Standard for Motion to Remand under F.R.C.P. 12(b)(1)

In general, a party may remove a civil action filed in state court if the federal court would have had original jurisdiction to hear the matter. See 28 U.S.C. § 1441(b) (1999); see also Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990), cert. denied, 498 U.S. 1085 (1991). Once the case has been removed, however, the federal court may remand if there has been a procedural defect in removal, or if the court determines that it lacks federal subject matter jurisdiction to hear the case. See 28 U.S.C. § 1447(c) (1999); see also Township of Whitehall v. Allentown Auto Auction, 966 F. Supp. 385, 386 (E.D. Pa. 1997). Upon a motion to remand, it is always the moving party's burden to establish the propriety of removal, and all doubts as to the existence of federal jurisdiction must be resolved in favor of remand. See Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992); Independent Mach. Co. v. International Tray Pads & Packaging, Inc., No. CIV.A.97-2987, 1998 WL 35002, at *2 (D.N.J. Jan. 5, 1998).

1. The Fishmans' Motion to Remand

The Fishmans argue that remand is proper because this Court lacks subject matter jurisdiction over this controversy. The

Fishmans reason that federal jurisdiction is improper because Lumbermans' Motion for Removal was filed in response to their Petition to Compel Arbitration, that their Petition to Compel does not seek monetary damages, and, therefore, that the \$75,000.00 amount in controversy requirement of 28 U.S.C. § 1332 cannot be satisfied. (Fishmans' Mem. of Law in Supp. of [Lumbermans'] Mot. to Remand at 4). The Fishmans further reason that jurisdiction cannot be exercised because their Petition to Compel does not seek monetary damages but only seeks to change the forum in which this controversy will be resolved. (Fishmans' Mem. of Law in Supp. of [Lumbermans'] Mot. to Remand at 4-5).

Lumberman, relying on Third Circuit case law, argues that a Petition to Compel Arbitration which was properly removed to federal court may not be remanded unless the award resulting from the desired arbitration cannot possibly exceed the \$75,000.00 amount in controversy requirement of 28 U.S.C. § 1332. (Lumberman's Ans. Mot. to Remand at 3-5). Lumberman cites Manze v. State Farm Ins. Co., 817 F.2d 1062 (3d Cir. 1987), for the proposition that where a court considers the jurisdictional amount requirement when deciding whether to remand a Petition to Compel Arbitration (or other similar petition), "the court should look through to the possible award resulting from the desired arbitration, since the petition to compel arbitration is only the initial step in a litigation which seeks as its goal a judgment affirming the award." Id. at 1068.

In Manze, the petitioner ("Manze") argued that her Petition to

Appoint an Arbitrator was not removable pursuant to 28 U.S.C. § 1441 and that the district court lacked jurisdiction because the amount in controversy requirement was unsatisfied. Id. The Third Circuit disagreed, holding that Manze's Petition to Appoint an Arbitrator was removable because she never stated that her claim would total less than the amount in controversy requirement. Id.

The instant matter and Manze are similar factually. The Fishmans seek to reform their UIM policy to add \$1,000,000.00 in additional insurance coverage. This Court adopts the Manze court's reasoning and holds that Lumbermans' removal was proper because an arbitrator's award in this matter may exceed the \$75,000.00 jurisdictional amount in controversy requirement of 28 U.S.C. §1332. After all, the Fishmans wish to reform their insurance policy to include \$1,000,000.00 of UIM insurance coverage. Accordingly, in recognition that an arbitrator's award may exceed \$75,000.00, the Fishmans' Motion to Remand is DENIED, thereby vesting this Court with continued jurisdiction over this matter. The Court now considers the Fishman's Motion to Dismiss.

B. Standard for Motion to Dismiss under F.R.C.P 12(b)(1)

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a district court may grant a dismissal based on the legal insufficiency of a claim. Dismissal is proper only when the claim clearly appears to be either immaterial and solely for the purpose of obtaining jurisdiction, or is wholly insubstantial and frivolous. Kehr Packages, Inc. v. Fudelcor, Inc., 926 F.2d 1406,

1408-09 (3d Cir.), cert. denied, 501 U.S. 1222, 111 S. Ct. 2839 (1991). When the subject matter jurisdiction of the court is challenged, the party that invokes the court's jurisdiction bears the burden of persuasion. Kehr Packages, Inc., 926 F.2d at 1409 (citation omitted). Moreover, the district court is not restricted to the face of the pleadings but may review evidence to resolve factual disputes concerning the existence of jurisdiction. McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988) (citation omitted), cert. denied, 489 U.S. 1052, 109 S. Ct. 1312 (1989).

1. The Fishmans' Motion to Dismiss

Lumbermans filed a Complaint Seeking Declaratory and Injunctive Relief pursuant to the Federal Declaratory Relief Act (the "Act"). (Lumbermans' Compl. Seeking Decl. and Inj. Relief). The Fishmans argue that the Act empowers this Court to refuse to exercise its discretionary jurisdiction over this matter and that this Court, for the reasons discussed below, should refuse to exercise jurisdiction over Lumbermans' Complaint Seeking Declaratory and Injunctive Relief.

At the center of this controversy is the parties' conflicting interpretation and proposed application of 75 Pa. Cons. Stat. Ann. § 1731(c.1), which sets forth the availability, scope, and amount of uninsured and underinsured motorist coverage under Pennsylvania law. Section 1731(c.1) states in pertinent part:

Insurers shall print the rejection forms required by subsections (b) [uninsured motorist coverage] and (c)

[underinsured motorist coverage] on separate sheets in prominent type and location. . . . Any rejection form that does not specifically comply with this section is void. If the insurer fails to produce a valid rejection form, uninsured or underinsured coverage, or both, as the case may be, under that policy shall be equal to the bodily injury liability limits.

75 Pa. Cons. Stat. Ann. § 1731 (West 1999) (emphases added).

Recent federal court decisions, as relied on by Lumbermans, interpret section 1731(c.1) to mean that while uninsured and underinsured coverage waivers must appear on separate pages, each waiver may be printed on a page that also contains other provisions of the insurance policy. See Nationwide Mutual Ins. Co. v. Monteith, CIV.A. No. 96-7907, 1997 WL 87280, at *3 (E.D. Pa. February 26, 1997) (stating that there is no evidence in section 1731(c.1) that the legislature intended this statute to require that each waiver appear on a separate sheet of paper from any other provision of the insurance policy); Estate of Franks v. Allstate Ins. Co., 895 F. Supp. 77, 91 (E.D. Pa. 1995) (stating that section 1731 cannot be read to require that uninsured and underinsured motorist coverage waivers be on pages of the policy that are free of other policy provisions).

A recent Superior Court of Pennsylvania decision, Winslow-Quattlebaum v. Maryland Cas. Co., 723 A.2d 681 (Pa. Super. Ct. 1999), which is now on appeal to the Pennsylvania Supreme Court, interprets differently section 1731(c.1). In Winslow-Quattlebaum, the appellate court rejected the lower court's decision that the injured, insured motorist was ineligible to recover underinsured

motorist coverage pursuant to her insurance policy because she signed a waiver of such coverage. Id. at 684. The insured argued that her waiver of underinsured motorist coverage was invalid because the waiver she signed was printed on the same page as a waiver of "stacked underinsured coverage limits." Id. at 683. The Superior Court interpreted section 1731(c.1) to require that uninsured and underinsured motorist coverage waivers must be on separate pages and that said pages must be devoid of any other language, including other policy provisions. Id. at 684. The court stated that "[i]f there is other language on a piece of paper, we simply cannot see how the document could comply specifically with the statutory language requiring the rejection to be on a separate sheet." Id.

The Winslow-Quattlebaum court then acknowledged that the federal court in Nationwide Mutual Ins. Co. v. Monteith, CIV.A. No. 96-7907, 1997 WL 87280 (E.D. Pa. February 26, 1997) and Estate of Franks v. Allstate Ins. Co., 895 F. Supp. 77 (E.D. Pa. 1995) interpreted section 1731(c.1) differently but tempered the import of those decisions by stating that "a federal court's interpretation of state law does not bind state courts" and that "state courts are the principal interpreters of state law." Id. (citations omitted). The Fishmans seized upon this language and argue that this Court should not exercise its discretionary authority to hear Lumbermans' declaratory judgment action and should instead defer jurisdiction to the Court of Common Pleas of Philadelphia County. The gravamen of the Fishmans' argument is that

this Court should not exercise its discretionary jurisdiction over this matter because the Winslow-Quattlebaum decision "unsettles" Pennsylvania law regarding section 1731(c.1). The Fishmans also argue that discretionary authority should not be exercised pursuant to the test announced by the Supreme Court in Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 495 (1942).

Lumbermans argues that the Fishmans' Motion to Dismiss must fail because this Court may properly retain jurisdiction pursuant to the various tests enunciated by the Third Circuit Court of Appeals and the Supreme Court, including that Court's Brillhart test. (Memo. of Law in Supp. of Resp. of [Lumbermans] to Mot. to Dismiss of [Fishmans] at 4-10).

In Brillhart, the Supreme Court held that a district court may decline to hear lawsuits brought under the Act¹ in favor of a pending state action. See NYLife Distrib., Inc. v. Adherence Group, Inc., 72 F.3d 371, 376 (3d Cir. 1996)(citation omitted)(same). The significance of the Brillhart decision, as it relates to the instant action, is captured by the Court's statement that district courts have discretion to dismiss a declaratory judgment action when "it would be uneconomical as well as vexatious

¹ Section 2201(a) of the Federal Declaratory Judgment Act provides in pertinent part:

[i]n 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 shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a) (1999). As a statute of a "purely remedial and equitable nature," the Act gives courts statutory discretion to decide whether to entertain actions for declaratory judgments.

for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties." Brillhart, 316 U.S. 495, 62 S. Ct. at 1175-76 (emphasis added). Because the instant action involves parties that are not parties to the Winslow-Quattlebaum v. Maryland Cas. Co. appeal, the parties' arguments based on the Act are inapposite. As such, the Court takes instruction from the Supreme Court's statements in Meredith v. City of Winterhaven, 320 U.S. 228, 64 S. Ct. 7 (1943):

in the absence of some recognized public policy or defined principle guiding the exercise of the jurisdiction conferred . . . it has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment. When such exceptional circumstances are not present, denial of that opportunity by the federal courts merely because the answers to the questions of state law are difficult or uncertain or have not yet been given by the highest court of the state, would thwart the purpose of the jurisdictional act.

Id. at 234, 64 S. Ct. at 234-35. Having already determined that this Court properly has jurisdiction over this controversy, the Court also holds that it has both the authority and the responsibility to rule on Lumbermans' Complaint Seeking Declaratory and Injunctive Relief. Accordingly, the Fishman's Motion to Dismiss is denied.

An appropriate Order follows.

