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

COLTEC INDUSTRIES INC. et al.	:	CIVIL ACTION
v.	:	
CONTINENTAL INSURANCE COMPANY	:	NO. 04-5718

MEMORANDUM

Dalzell, J. May 11, 2005

Thousands of asbestos claims have forced Coltec Industries and its subsidiary, Garlock Sealing Technologies, to incur over $900 million in defense costs and damages. Coltec and Garlock claim that five insurance policies Continental Insurance Company issued between 1979 and 1984 oblige Continental to indemnify them for its share of those huge sums. Before us is Continental's motion to dismiss, or, in the alternative, to stay the parties' coverage dispute because of parallel proceedings in New York tribunals.

As the heart of the amended complaint is the declaratory judgment claim, we hold that the discretionary standard the Supreme Court articulated in Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 495 (1942) and elucidated in Wilton v. Seven Falls Co., 515 U.S. 277, 286-88 (1995) -- rather than the stringent general standard of Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976) -- guides us. Under this standard, to promote judicial economy and comity, we shall stay this case pending resolution of the parties' dispute in New York.

A. Factual and Procedural Background

For years, Coltec and Garlock manufactured gaskets and sealants. In the past two decades, thousands of plaintiffs have sued them for harm allegedly caused by asbestos in Garlock's products.[1] As of December 9, 2004, Coltec and Garlock were defending over 7,000 such claims in Pennsylvania alone.

Between 1979 and 1984, Continental issued five excess liability insurance policies to Coltec and Garlock covering them for potential asbestos liability.[2] Under the policies, if Coltec and Garlock incurred costs exceeding a certain limit (ranging from $101 million to $102.5 million, depending on the year), Continental would provide up to $40 million in excess coverage. In 2003 and 2004, Coltec notified Continental that, by the Spring of 2005, their costs would reach this limit, triggering Continental's coverage duty. In a letter dated November 19, 2003, however, Robert S. Elrich, Continental's claims consultant, asserted for the first time that a 1998 settlement agreement between a Continental affiliate and another Coltec subsidiary extinguished whatever duty his company ever had.

Ten days later, Continental sued Coltec and Garlock in the Supreme Court of the State of New York. The complaint asks

---

1. Though there is a suggestion in the filings that Coltec may have sold asbestos-containing products -- compare Am. Compl. ¶ 6 with ¶ 7 -- it would seem that only Garlock's gaskets and sealants are the products at issue in the underlying cases.

2. To avoid smothering the text with needless layers of complexity, we provide only an overview of the parties' coverage dispute.

that court to declare that Continental has no duty to cover Coltec's and Garlock's losses. On January 4, 2005, Coltec and Garlock filed a motion to dismiss the New York action on forum non conveniens grounds, and, on April 13, 2005, the Honorable Judith J. Gische denied their motion. On April 28, 2005, Judge Gische held a pretrial conference in which she scheduled discovery deadlines, a follow-up conference, and summary judgment motions.

In March of 2005, the parties agreed to arbitrate a key issue in this case, whether the 1998 settlement agreement negated Continental's duty.[3] The arbitration is advancing expeditiously in New York City. The parties filed the requisite pleadings and, on March 29, 2005, the case manager hosted a telephonic conference in which all parties agreed about the number of arbitrators, desired arbitrator qualifications, locale (New York City), and number of hearing days.

On December 9, 2004, Coltec and Garlock filed a complaint of their own in our court, which they amended on January 26, 2005. In count one, Coltec and Garlock ask us to declare that Continental must indemnify them under the five

---

3. The parties request that we seal all details relating to the arbitration proceedings. While we shall honor their request to the extent possible, we must describe the status of the proceedings to make our analysis intelligible. We also remind the parties that federal court litigation is not a private dispute resolution forum. See generally Cipollone v. Liggett Group, Inc., 785 F.2d 1108 (3d Cir. 1984); Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994); Glenmede Trust Co. v. Thompson, 56 F.3d 476 (3d Cir. 1995).

policies. Count two alleges breach of contract, and count three alleges bad faith. Because the parties agreed to arbitrate, count four, in which Coltec and Garlock sought a declaration of arbitrability, is now moot.

Before us is Continental's motion to dismiss, or in the alternative to stay this case because of the New York action.

B. Legal Analysis

Because of our "virtually unflagging obligation" to adjudicate justiciable controversies, as a general rule we may stay litigation because of parallel state proceedings only under exceptional circumstances. See Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 818 (1976); Moses H. Cone Memorial Hosp. v. Mercury Constr. Co., 460 U.S. 1, 16 (1983). Declaratory judgment actions,[4] however, stand on a different footing. See Brillhart v. Excess Ins. Co., 316 U.S.

---

4. The Declaratory Judgment Act reads in relevant part as follows:

> 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, whether or not further relief is or could be sought. Any 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. Because the Act uses the word "may" instead of "shall," the Supreme Court has reasoned that Congress textually vested district courts with more power to abstain than they have in traditional cases. See Wilton v. Seven Falls Co., 515 U.S. 277, 286-87 (1995).

491, 495 (1942); Wilton v. Seven Falls Co., 515 U.S. 277, 286 (1995) ("Distinct features of the Declaratory Judgment Act, we believe, justify a standard vesting district courts with greater discretion in declaratory judgment actions than that permitted under the 'exceptional circumstances' test of *Colorado River* and *Moses H. Cone*."). Because the amended complaint states both declaratory and coercive claims, at the outset we must determine whether Colorado River's "exceptional circumstances" standard gives way to Wilton's discretionary one.

While our Court of Appeals has never addressed this issue, other federal courts have, and our review of their decisions persuades us that Wilton's standard should apply to the particular circumstances here.

Federal courts facing this issue take one of three approaches. Some automatically apply Colorado River's stringent standard even if the declaratory claims dominate. See, e.g., Kelly Investment, Inc. v. Continental Common Corp., 315 F.3d 494, 497 n.4 (5th Cir. 2003). Others consider whether the coercive claim autonomously exists "in the sense that it could be litigated in federal court even if no declaratory claim had been filed," United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1113 (9th Cir. 2001), or because the plaintiff claims "actual wrong . . . or loss," i.e., monetary damages, Horne v. Firemen's Ret. Sys. of St. Louis, 69 F.3d 233, 236 (8th Cir. 1995). A third group looks to the heart of the action. That is to say, if the outcome of the coercive claims hinges on the outcome of the

declaratory ones, Wilton's standard governs; conversely, if the opposite applies, Colorado River's standard controls. See Franklin Commons E. P'ship. v. Abex Corp., 997 F. Supp. 585, 592 (D.N.J. 1998) (Walls, J.); Zivitz v. Greenberg, Civ. No. 98-5350, 1999 WL 262123, at *3 (N.D.Ill. Apr. 9, 1999); Gatewood Lumber, Inc. v. Travelers Indem. Comp., 898 F. Supp. 364, 366 (S.D.W.V. 1995); see also The Scully Comp. v. Onebeacon Ins. Comp., Civ. No. 03-6032, 2004 WL 1166594, at *3 (E.D.Pa. May 24, 2004) (Padova, J.) (treating insurance-coverage dispute as declaratory when breach-of-contract and bad-faith claims hinged on the court's resolution of the declaratory-judgment claim).

We choose the third approach because it seems to us most faithful to the concerns that animated Wilton. In Wilton, the Supreme Court emphasized that, "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." Id. at 288. In other words, courts should not elevate form over substance, and so if the declaratory judgment would "serve no useful purpose," abstention would not avert a "wasteful expenditure of judicial resources." Id.

By contrast, the other two approaches can compel district courts to duplicate parallel state proceedings. Professor Chemerinsky has stressed the important reality that this duplication can squander judicial resources "because ultimately only one of the jurisdictions will actually decide the

case. Once one court renders a ruling, the other court will be obliged to halt its proceedings and give res judicata effect to the decision." Erwin Chemerinsky, Federal Jurisdiction § 14.1, at 839 (4th ed. 2003). The course we follow enables district courts to conserve their resources by staying a case that would duplicate state litigation.[5] In other words, it gives district courts the power to act on "practicality and wise judicial administration." Wilton, 515 U.S. at 288.

Applying the third approach, the heart of this action is count one, the declaratory judgment claim. Coltec and Garlock seek a declaration that Continental must indemnify them for "(a) defense costs and (b) all sums that they have become or will become obligated, through judgment, settlement, or otherwise, to pay on account of the Underlying Asbestos Claims and any other asbestos claims arising out of the products or operations of Coltec and Garlock that may be asserted against them in the future." Am. Compl. ¶ 30. Although Coltec and Garlock also sue for breach of contract and bad faith, the outcome of those claims depends on how we interpret the policies when we resolve the declaratory judgment claim. Unless we decide that the policies oblige Continental to indemnify Coltec and Garlock, their claim for money damages is moot. Thus, "practicality and wise judicial

---

5. Also, we note that two courts in our Circuit, including one from this district, followed the third approach. See Franklin Commons E. P'ship. v. Abex Corp., 997 F. Supp. 585, 592 (D.N.J. 1998) (Walls, J.); The Scully Comp. v. Onebeacon Ins. Comp., Civ. No. 03-6032, 2004 WL 1166594, at *3 (E.D.Pa. May 24, 2004) (Padova, J.).

administration" lead us to stay our hand in favor of the more advanced proceedings in New York.

Applying this standard, when district courts must "decide whether to hear declaratory judgment actions involving insurance coverage issues," our Court of Appeals has suggested three relevant considerations:

> 1. A general policy of restraint when the same issues are pending in a state court;
>
> 2. An inherent conflict of interest between an insurer's duty to defend in a 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.

State Auto Ins. Comps. v. Summy, 234 F.3d 131, 134 (3d Cir. 2000) (quoting United States v. Com. of Pennsylvania Dept. of Envtl. Res., 923 F.2d 1071, 1075-76 (3d Cir. 1991)). While the second consideration is inapplicable here, the first and third counsel us to stay this case.

As to the first consideration,[6] we must presumptively stay this case because the "same issues" are pending in both cases. First, like us, Judge Gische would have to decide whether

---

6. To the extent Wilton's standard requires us first to consider parallels between the state and federal proceedings, we note that both actions "involve the same parties and claims." Ryan v. Johnson, 115 F.3d 193, 196 (3d Cir. 1997). The parties do not dispute this. On page eight of the memorandum accompanying its motion to dismiss, Continental argued parallelism. And in their two responses, while Coltec and Garlock meticulously countered nearly all of Continental's other arguments, they conspicuously failed to counter, or even attempt to parry, Continental's position.

the 1998 settlement agreement extinguished Continental's duty. Second, she, like us, would have to determine which state's law, New York's or Pennsylvania's, governs. Third and fourth, both courts would have to decide the central issues of trigger and scope of coverage. Fifth, each would have to decide the relevance of Coltec's and Garlock's 1987 lawsuit in this district establishing Aetna's duty to cover asbestos losses. Last, Judge Gische, like us, would have to decide the relevance of the 1995 comprehensive asbestos funding agreement, known as the "EIFA," that Coltec and Garlock negotiated with nearly all of their other excess liability carriers.

The third Summy consideration also supports staying this case. Judicial economy and comity favor resolving all litigation stemming from this single coverage dispute in a single court system. The same dispute simultaneously proceeding in two courts, when only one will actually decide the issues, wastes the parties' and judicial resources. Moreover, the New York case is more advanced than this one. On April 13, 2005, Judge Gische denied Coltec's and Garlock's motion to dismiss, and fifteen days later she entered an order scheduling discovery, a second conference, and summary judgment motions. Pursuant to her order, the parties must exchange all initial disclosures just over a month from now. Proceeding here would palpably interfere with the "orderly and comprehensive disposition of [the] state court litigation." Brillhart, 316 U.S. at 495. Such interference would also undermine comity between federal and state courts.

The parties' engagement of the American Arbitration Association also supports a stay. The parties have agreed to arbitrate Continental's principal defense in this case, that the 1998 settlement agreement extinguished its duty of indemnity. Like the New York action, this arbitration proceeds apace. Over a month ago, the case manager hosted a conference call in which all parties agreed to the number of arbitrators, locale, and desired arbitrator qualifications. Consequently, exercising jurisdiction over this case would entangle it not just with one tribunal but with two others.[7]

---

7. The parties squabble about the extent to which two legal issues -- post-policy coverage and triggering -- are "unsettled" under New York law. We can resolve this motion without addressing them. We note, however, that the extent to which these issues are settled "would seem to be even less reason for the parties to resort to the federal courts." Summy, 234 F.3d at 136.

We also note that, on April 27, 2005, we received a letter from Brian G. Bieluch, Esq. of Covington & Burling, the firm representing Coltec and Garlock. The letter reads in relevant part as follows:

> With respect to Defendant Continental's reliance upon *Jamison v. Miracle Mile Rambler, Inc.*, 536 F.2d 560, 563 (3d Cir. 1976), and *Crawford v. Manhattan Life Insurance Co. of New York*, 208 Pa. Super. 150, 221 A.2d 877, 880-81 (Pa. Super. Ct. 1966), which were cited for the first time on page five of its supplemental memorandum of law filed on April 25, 2005, Plaintiffs write to note the existence of adverse, binding authority found in *Melville v. American Home Assurance Co.*, 584 F.2d 1306, 1311-13 & n.7 (3d Cir. 1978).

Continental cited these two cases to demonstrate that, under Pennsylvania law, an insurance contract is governed by the law of the state where the parties formed it.

(continued...)

While we conceivably could dismiss this case, the Supreme Court has cautioned that the more "preferable course" is to enter a stay. Wilton, 515 U.S. 288 n.2. Staying this case assures that, if the New York Supreme Court fails to resolve all contested issues, no time bar will preclude the parties from turning to us to sow the seed of finality. Id. Accordingly, we shall enter a stay.

---

7. (...continued)

Had the insured's counsel continued to look, he would have seen that opposing counsel, not he, correctly cited Pennsylvania law as our Court of Appeals construed it. See J.C. Penney Life Ins. Comp. v. Pilosi, 393 F.3d 356, 360 (3d Cir. 2004) ("Under Pennsylvania choice of law rules, an insurance contract is governed by the law of the state in which the contract was made.") (citing Crawford, 221 A.2d at 880 and McMillan v. State Mut. Life Assurance Co. of Am., 922 F.2d 1073, 1074 (3d Cir. 1990)); CAT Internet Servs., Inc. v. Providence Washington Ins. Co., 333 F.3d 138, 141 (3d Cir. 2003) ("Pennsylvania conflict of laws principles dictate that an insurance contract is guided by the law of the state in which it is delivered.") (citing Travelers Indem. Co. v. Fantozzi, 825 F. Supp. 80, 84 (E.D.Pa. 1993)).

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

COLTEC INDUSTRIES INC. et al.	:	CIVIL ACTION
v.	:	
CONTINENTAL INSURANCE CO.	:	NO. 04-5718

ORDER

AND NOW, this 11th day of May, 2005, upon consideration of defendant's motion to dismiss or, in the alternative, stay this case (docket entry # 18), plaintiffs' response (docket entry # 19), plaintiffs' supplemental filing (docket entry # 24), defendant's supplemental filing (docket entry # 25), plaintiffs' April 14, 2005 letter and attachment, plaintiffs' April 27, 2005 letter, defendant's May 5, 2005 letter and attachment, and plaintiffs' May 5, 2005 letter and attachments, and for the reasons enunciated in our memorandum, it is hereby ORDERED that:

1. Defendant's motion is GRANTED IN PART and DENIED IN PART;

2. Count four of the Amended Complaint is DISMISSED AS MOOT;

3. The remainder of this case is STAYED pending resolution of the parties' dispute by the Supreme Court for the State of New York and the American Arbitration Association;

4. The Clerk of Court shall TRANSFER this case from our active docket to our civil suspense docket; and

5. Beginning August 1, 2005, and every ninety days thereafter, defendant shall ADVISE us (FAX #: 215-580-2156) about the status of the New York action and the arbitration

proceedings, and defendant shall promptly PROVIDE us with every order or opinion the New York Supreme Court or the arbitrator issues.

BY THE COURT:

_____
Stewart Dalzell, J.