

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

FIRST MERCURY INSURANCE	:	CIVIL ACTION
COMPANY,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
LEGENDS, INC., et al.,	:	
Defendants.	:	NO. 12-1536

MEMORANDUM RE: MOTION TO DISMISS

Baylson, J.

December 13, 2012

I. Introduction

Plaintiff First Mercury Insurance Company (“Plaintiff”) brought this declaratory judgment action (the “Federal Action”), pursuant to 28 U.S.C. § 2201, over the terms of an insurance policy it issued to defendant Legends, Inc. (“Legends”). Defendants Legends and Jobin J. Granstrom (“Granstrom”) (collectively, “Moving Defendants¹”) filed a Motion to Dismiss (ECF 9) (the “Motion”), requesting that the Court decline to exercise its discretionary jurisdiction over this case, arguing that the same issues are also being litigated in a Pennsylvania state court action (the “State Action”), and that according to Third Circuit’s ruling in State Auto. Ins. Cos. v. Summy, 234 F.3d 131 (3d Cir. 2000), the state forum should decide them. For the reasons that follow, the Court will **GRANT** the Motion and exercise its discretion not to maintain jurisdiction over the Federal Action.

II. Background

A. Factual and Procedural Background

¹Only defendants Legends and Granstrom participated in prosecuting the Motion. The remaining five Defendants have not filed any papers related to the Motion and were not represented at the oral argument.

Plaintiff issued an insurance policy to Legends that covered, among other things, various potential liabilities related to Legend's owning and operating a bar/restaurant (the "Policy"). The Policy contains a choice of law clause selecting Illinois law, as well as a non-exclusive forum selection clause that gives Plaintiff the option to litigate in Illinois.

During the effective period of the Policy, Granstrom, a Legends employee, allegedly roughed up and gruffly ejected from Legends's bar a man named Jordan Seyler ("Seyler"). Seyler, allegedly injured by Granstrom's manhandling, brought suit in the Berks County Pennsylvania state court of Common Pleas in 2011 (the "Underlying Action") against, among others, Legends and Granstrom, claiming that Granstrom was acting in his capacity as a Legends employee at the time he allegedly attacked Seyler.

Sometime before July 12, 2011, Legends requested that pursuant to the Policy, Plaintiff pay Legends's and Granstrom's defense costs and indemnify them for any liabilities resulting from the Underlying Action. By letter dated July 12, 2011, Plaintiff rejected Legends's request, stating that the nature of Seyler's claims triggered certain coverage exceptions in the Policy that relieved Plaintiff of any defense and indemnification obligations.

Plaintiff filed this Federal Action on March 27, 2012 claiming that certain coverage exceptions relieve it of any obligation to defend or indemnify Defendants in the Underlying Action. Moving Defendants filed their Answer (ECF 5) on May 18, 2012, asserting numerous affirmative defenses.

Moving Defendants filed the instant Motion to Dismiss on July 11, 2012 (ECF 9). Plaintiff responded on July 30, 2012 (ECF 21). The Court held oral argument on September 19, 2012. At oral argument counsel suggested that the Underlying Action was still pending in the Berks County Court of Common Pleas. However, exhibits to the briefs established that the

underlying action had been dismissed without prejudice on January 13, 2012. By Order dated October 4, 2012 (ECF 37) this Court requested counsel to verify the status of the Underlying Action. Counsel submitted letters on October 16, 2012 and October 18, 2012 confirming that the Underlying Action had been dismissed without prejudice.

However, filings in this case also revealed that after plaintiff had filed the Federal Action in this Court, defendant had filed a separate suit in Berks County Court for a declaratory judgment seeking coverage from Plaintiff.

III. The Declaratory Judgment Act

The Declaratory Judgment Act grants federal district courts jurisdiction “to declare the rights and other legal relations of any interested party seeking such a declaration.” 28 U.S.C. § 2201(a). The Act is somewhat unique, however, in that district courts have discretion whether to exercise that jurisdiction. *Id.* (providing that a court “may” declare such rights and legal relationships); Wilton v. Seven Falls Co., 515 U.S. 277, 287-88 (1995) (“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.”); Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 494 (1942); Summy, 234 F.3d 131, 133 (3d Cir. 2000) (“The [Supreme] Court [in Brillhart] emphasized that the jurisdiction conferred by the Act was discretionary, and district courts were under no compulsion to exercise it.” (citation omitted)).

The Supreme Court has explained the rationale behind the grant of discretionary jurisdiction:

“Ordinarily it would be uneconomical as well as vexatious 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. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided.”

Summy, 234 F.3d at 133 (quoting Brillhart, 316 U.S. at 495).

The Supreme Court and the Third Circuit have delineated the factors district courts should weigh in deciding whether or not to exercise jurisdiction in such cases. A critical inquiry is “whether the questions in controversy between the parties to the federal suit, and which [were] not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in the state court.” Summy, 234 F.3d at 133 (quoting Brillhart, 316 U.S. at 495). The Third Circuit has expounded three additional considerations in declaratory judgment actions regarding insurance coverage disputes:

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. Promotion of judicial economy by avoiding duplicative and piecemeal litigation.

Summy, 234 F.3d at 134-35. With respect to the third factor, the Third Circuit noted that it was “irrelevant [whether] the state [action] . . . was filed after its counterpart in the District Court.” Id. at 136.

The Third Circuit also cautioned district courts to “give serious consideration to the fact that they do not establish state law, but are limited to predicting it. This is especially important in insurance coverage cases” Id. Therefore, “[i]n order to maintain the proper relationship between federal and state courts, it is important that district courts ‘step back’ and allow the state courts the opportunity to resolve unsettled state law matters.” Id. District courts should also be hesitant to entertain actions for declaratory judgments when the law of the state is well settled:

“When the state law is firmly established, there would seem to be even less reason for the parties to resort to the federal courts. Unusual circumstances may occasionally justify such action, but declaratory judgments in such cases should be rare.” Id.

IV. Discussion

Moving Defendants argue that Summy mandates dismissal of the Federal Action. In doing so, they direct this Court to two recent Eastern District of Pennsylvania cases to support their position: Allstate Ins. Co. v. Manilla, Civil Action No. 11-5102, 2012 WL 1392559 (Apr. 20, 2012) (Baylson, J.) (dismissing, pursuant to Summy, Allstate Insurance Company’s action for declaratory relief), and another from Judge Gardner, First Mercury Ins. Co. v. Legends, Inc. [First Mercury II], Civil Action No. 11-cv-7097 (ECF 24) (June 7, 2012) (citing Summy and Manilla when dismissing Plaintiff’s action for declaratory relief against, among others, defendant Legends regarding the same issues presented in the Federal Action, i.e., the applicability of the Policy’s coverage exceptions).

In Summy, an underlying tort action and declaratory judgment suit were pending in a court of the same state as the undisputed governing laws, and a parallel declaratory judgment suit was pending in federal district court. The declaratory judgment suits involved unsettled questions of state insurance law. In light of these circumstances, and in the absence of any federal interest implicated by the issues in the declaratory judgment suits, the Third Circuit held that the district court did not exercise sound discretion in maintaining jurisdiction, concluding that “[j]udicial efficiency was not promoted” by exercising jurisdiction, and that failing to dismiss the federal court action was the sort of “vexatious and gratuitous interference with state court litigation” Brillhart condemned. Summy, 234 F.3d at 135-36 (quotations omitted).

Essential to Summy’s understanding of the implications of parallel actions is a concern

with avoiding “giv[ing] short shrift” to the “state’s interest in resolving its own law” because one or both of the parties “perceive some advantage in the federal forum.” Id. at 136. In other words, when Summy held a federal declaratory relief action should have been dismissed in favor of a state action, it did do based largely on the eminently reasonable principle that states’ laws are more appropriately determined by their respective courts than by district courts with overlapping jurisdiction. Summy, 234 F.3d at 135.

The principal difference between this case and Summy is that in this case, Illinois law applies and the State Action is pending in a Pennsylvania court. The Court is not aware of any decision in the Third Circuit addressing how Summy’s policy of favoring state court resolution of state law issues should be viewed when the state court would be applying out-of-state law.² E.g., O’Neill v. Geico Ins. Co., 2012 WL 401116 (E.D. Pa. Feb 8, 2012) (court did not address that remanding case would result in Delaware court applying Pennsylvania law).

Returning to Manilla, 2012 WL 1392559, and First Mercury I, the Court notes that Manilla was, at bottom, Summy redux – i.e., Pennsylvania state law controlled and the parties filed actions in Pennsylvania federal and state courts – and, therefore, provides no guidance as to how the Court should handle this case. In First Mercury I, Judge Gardener recognized that out-of-state law governed, but did not find that this counseled against dismissal because the state court and federal district court were equally competent to apply that law. First Mercury I did not, however, discuss Summy’s reliance on the principle that states’ laws are more appropriately determined by their respective courts. Nevertheless, this Court concurs with the result in First Mercury I as this Court

² The Court notes that in Atlantic Mut. Ins. Co. v. Gula, the Third Circuit affirmed a district court’s dismissal of a petition for declaratory judgment where Pennsylvania state law controlled and the state actions were pending in Delaware state court. 84 F. App’x 173, 174 (3d Cir. 2003) (citing Summy).

cannot see any significant reason to distinguish Summy, just because the law of another state is binding. State courts are just as able as federal district courts to apply out-of-state law, and, therefore, the application of out-of-state law by itself does not override the “importan[ce] of district courts ‘step[ping] back’ to allow the state courts the opportunity to resolve unsettled state law matters,” or create the kind of “rare” and “[u]nusual circumstances [that] may occasionally justify” entertaining an action for declaratory relief when the governing state law is well settled. Summy, 234 F.3d at 136.

“The Central question” facing this Court “is whether the controversy may ‘better be settled’ in state court.” Atlantic Mut. Ins. Co. v. Gula, 84 F. App’x 173, 174 (3d Cir. 2003) (quoting United States v. Pa. Dep’t of Env’tl. Res., 923 F.2d 1071, 1075 (3d Cir.1991)). Applying the three factors from Summy, which district courts should consider when determining whether the parties’ dispute would be better handled by a state court, the dismissal of the Underlying Action is a significant reason to decline jurisdiction, as is the existence of a parallel declaratory judgment action in state court. There being “no federal interests promoted by deciding this case” in this Court, the case must be dismissed in recognition of the ““considerations of practicality and wise judicial administration”” that the Supreme Court and Third Circuit have instructed are the touchstone for the proper exercise of jurisdiction in declaratory judgment cases. Summy, 234 F.3d at 136 (quoting Wilton, 515 U.S. at 288).

V. Conclusion

For the above reasons, the Court declines to exercise its discretionary jurisdiction over Plaintiff’s declaratory judgment action and GRANTS Moving Defendants’ Motion to Dismiss. An appropriate order follows.

