

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

PETER LEIBUNDGUT & : CIVIL ACTION
DEBORAH LEIBUNDGUT, H/W :
 :
v. :
 :
LIBERTY MUTUAL FIRE INSURANCE CO. : NO. 97-3240

MEMORANDUM and ORDER

Norma L. Shapiro, J.

November 6, 1997

Plaintiffs Peter Leibundgut and Deborah Leibundgut (collectively the "Leibundguts") filed an Amended Complaint against defendant Liberty Mutual Fire Insurance Company ("Liberty"). Liberty has filed a motion to dismiss the Leibundgut's Amended Complaint. For the reasons stated below, the court will grant the motion to dismiss.

FACTS

The Leibundguts are citizens and residents of New Jersey. (Compl. ¶¶ 1-2). Liberty is a corporation organized under the laws of Massachusetts with its principal place of business in Massachusetts. Liberty is licensed to do business in New Jersey and Pennsylvania. See id. at ¶ 3.

On April 1, 1993, the Leibundguts were traveling in Philadelphia, Pennsylvania in an automobile owned and operated by Peter Leibundgut. See id. at ¶ 5. While stopped at a traffic light, Carol A. Scheck ("Scheck"), a New Jersey resident, struck

their vehicle from behind.¹ Plaintiffs sustained "serious and permanent bodily injuries" and related expenses. Id. at ¶ 7. Liberty insured plaintiffs' vehicle.

The Leibundguts instituted an action in New Jersey state court against Scheck and her insurance carrier, Allstate Insurance ("Allstate"). See id. at ¶¶ 11-12. Scheck and Allstate, arguing the New Jersey automobile tort exemption statute (the "Act") bars recovery, have refused to settle the Leibundguts' state court claim. See id. at ¶ 12. The Act provides that every "owner, registrant, operator or occupant" of a vehicle covered by the Act is "exempted from tort liability for noneconomic loss to a person" required to maintain insurance under the Act. N.J. Stat. Ann. § 39:6A-8(a).

Plaintiffs have filed the present action against Liberty² to recover damages in excess of \$100,000 caused by Scheck's conduct. Plaintiffs argue they may be precluded from recovering the full amount of damages from Scheck and Allstate in the New Jersey action because of the Act. They seek a declaratory judgment against their own insurer, Liberty, that it will be liable for any excess damage they are unable to recover from

¹ Plaintiffs state Scheck struck "defendant's vehicle." The only defendant in this case is Liberty; presumably plaintiffs mean Scheck struck their vehicle.

² In their original Complaint, the Leibundguts named Liberty and Allstate as co-defendants. In their Amended Complaint and revised Amended Complaint, they dropped Allstate as a party.

Scheck and Allstate because the Act does not apply to an accident in Pennsylvania.

Liberty moved to dismiss the Amended Complaint because plaintiffs have failed to: 1) state a justiciable case or controversy against Liberty; 2) join all necessary parties; and 3) state a claim against Liberty upon which relief can be granted.

DISCUSSION

Article III requires a federal court to decide only an actual case or controversy; a court may not decide abstract or hypothetical questions. See Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 297 (1979). A court cannot issue an advisory opinion. See EPA v. Brown, 431 U.S. 99, 103-04 (1977).

Claims must be ripe for judicial review, even for a declaratory judgment. "A claim is unripe when critical elements are contingent or unknown." Thomas v. Union Carbide Agricultural Prods. Co., 473 U.S. 568, 579 (1985). If anticipated events giving rise to the alleged injury are remote, the case is not ripe for present adjudication. See Hodel v. Virginia Surface mining & Reclamation Act of 1977, 452 U.S. 264, 304 (1981); Behring Inter., Inc. v. Imperial Iranian Air Force, 699 F.2d 657, 664-65 (3d Cir. 1983). The result must affect the outcome of a real, not merely possible, dispute between the parties.

If the claim involves uncertain and contingent future events

that may not occur as anticipated, judicial review is not appropriate. "A case or controversy in the constitutional sense 'must be definite and concrete, touching the legal relations of parties having adverse legal interests.'" Jersey Central Power & Light Co. v. Local Unions, 508 F.2d 687, 699 (3d Cir. 1975) (quoting Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 240-241 (1937)), cert. denied, 425 U.S. 998 (1976).

Filing a declaratory judgment action does not itself create a case or controversy. "'Basically, the question in each case is whether ... there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 506 (1972) (quoting Maryland Cas. Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941)).

The Leibundguts' action against Scheck and Allstate in New Jersey state court is expected to go to trial within the next six months. The Leibundguts have alleged Liberty may be liable to them for any excess damages they are awarded but unable to collect from Allstate or Scheck. Until the state court proceeding concludes, the Leibundguts can do no more than speculate whether a cause of action against their own insurer will ever arise. Any decision this court might render regarding Liberty's future liability would be an advisory opinion, as the

Leibundguts may never have cause to proceed against Liberty. The Leibundgut's action is not ripe for judicial review and will be dismissed without prejudice. Because this case is not ripe for judicial review, the court need not reach Liberty's other arguments in support of its motion to dismiss.

An appropriate order follows.

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ORDER

AND NOW, this 6th day of November, 1997, upon consideration of defendant Liberty Mutual Fire Insurance Company's motion to dismiss plaintiffs Peter and Deborah Leibundguts' Amended Complaint, plaintiffs' response thereto, after a hearing in which counsel for both parties were heard, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

Defendant Liberty Mutual Fire Insurance Company's motion to dismiss the Amended Complaint is **GRANTED**; plaintiffs' Amended Complaint is **DISMISSED WITHOUT PREJUDICE**.

Norma L. Shapiro, J.