

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

MONTGOMERY MUTUAL INSURANCE COMPANY,	)	CIVIL ACTION NO. 3:00CV00079
	)	)
Plaintiff,	)	
	)	
v.	)	
	)	
DIANA F. DYER and GREGORY DYER,	)	
	)	
Defendants.	)	
_____	)	
DIANA F. DYER,	)	CIVIL ACTION NO. 3:00CV00091
	)	(consolidated under 3:00CV0079)
Plaintiff,	)	
	)	
v.	)	
	)	
LEE CURTIS INSURANCE SERVICE, INCORPORATED; and MONTGOMERY MUTUAL INSURANCE COMPANY,	)	<u>MEMORANDUM OPINION</u>
	)	
Defendants.	)	
_____	)	JUDGE JAMES H. MICHAEL, JR.

These actions arising out of Diana Dyer’s claim for insurance coverage were referred to the presiding United States Magistrate Judge for proposed findings of fact and a recommended disposition of dispositive motions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(B). Upon consideration of Ms. Dyer’s motions to dismiss and to remand, the Magistrate Judge recommended that the court deny both motions. Ms. Dyer objected. For the reasons set forth below, the Magistrate Judge’s recommendation shall be accepted;

Ms. Dyer's objections shall be overruled; and Ms. Dyer's motions to dismiss and to remand shall be denied.

Ms. Dyer's home burned in a fire and she sought coverage under her homeowner's insurance policy. Her insurance company, Montgomery Mutual Insurance Co. (Montgomery Mutual), denied coverage on the ground that Ms. Dyer's son, Gregory Dyer, intentionally set the fire. Montgomery Mutual sued the Dyers in this court on September 7, 2000, seeking a declaration of the parties' rights under the policy. The Dyers were not served with a copy of the complaint until October 19, 2000. Two days earlier, Ms. Dyer had sued Montgomery Mutual and her insurance broker, Lee Curtis Insurance Service, Inc. (Lee Curtis) in the Culpeper County, Virginia state circuit court, for bad faith settlement practices under Virginia Code § 38.2-510.

On November 7, 2000, Ms. Dyer moved to dismiss Montgomery Mutual's federal action, arguing that this court should abstain from exercising jurisdiction pursuant to *Colorado River Conservation District v. United States*, 424 U.S. 800 (1976). Two days later, Montgomery Mutual removed Ms. Dyer's state action to this court. Ms. Dyer moved to remand her case back to state court, on two grounds: (1) abstention is appropriate under *Colorado River* doctrine; and (2) Lee Curtis is a non-diverse, indispensable party, making removal based on diversity of citizenship improper. Lee Curtis subsequently moved to dismiss itself from Ms. Dyer's action.

The Magistrate Judge issued his Report and Recommendation on January 26, 2001. He reported that Ms. Dyer's counsel conceded at the hearing that Ms. Dyer could not in good faith oppose Lee Curtis's motion. The Magistrate Judge accordingly recommended

that Lee Curtis's motion be granted, and that Lee Curtis be dismissed as a defendant. No objection having been filed to this recommendation, see Fed. R. Civ. P. 72(b), it shall be accepted.

The result of this ruling is that the second ground for Ms. Dyer's motion to remand no longer applies, and that Ms. Dyer's motion to remand and motion to dismiss are based on the same abstention argument. The Magistrate Judge recommended that the court deny these motions. To this recommendation Ms. Dyer filed timely objections, which the court reviews *de novo*. See *id.*

Ms. Dyer's motions to dismiss and to remand being based on the same argument, they shall be disposed of together. Although she cites *Colorado River* in support of her abstention argument, the Fourth Circuit Court of Appeals has established a more particular set of factors for district courts to consider in deciding whether to exercise their discretion to hear declaratory judgment actions:

- (i) the strength of the state's interest in having the issues raised in the federal declaratory action decided in the state courts; (ii) whether the issues raised in the federal action can more efficiently be resolved in the court in which the state action is pending;[] (iii) whether permitting the federal action to go forward would result in unnecessary "entanglement" between the federal and state court systems, because of the presence of "overlapping issues of fact or law" []; and (iv) whether the declaratory judgment action is being used merely as a device for "procedural fencing" . . . .

*Myles Lumber Co. v. CNA Fin. Corp.*, 233 F.3d 821, 824 (4th Cir. 2000) (quoting *Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 257 (4th Cir. 1996) (quoting *Nautilus Ins. Co. v. Winchester Homes, Inc.*, 15 F.3d 371, 377 (4th Cir. 1994))) (alterations in

*Centennial Life*).

When considered in the instant case, these factors indicate that abstention is inappropriate. First, the issues in this case are not difficult and do not appear to be novel, making the state interest *de minimis*. Second, the issues raised in Montgomery Mutual’s action cannot be more efficiently be resolved in state court. Neither Montgomery Mutual’s action nor Ms. Dyer’s action independently encompasses the entire controversy: The former asserts only a declaratory judgment claim, and the latter asserts only a bad faith settlement claim. The Magistrate Judge having consolidated the two actions, the entire controversy would be most efficiently resolved before this court. Third, permitting Montgomery Mutual’s action to go forward would not result in unnecessary “entanglement” between the federal and state court systems, because Ms. Dyer’s state court action has been removed. Fourth, the court does not find any evidence of procedural fencing. Accordingly, the court shall exercise its discretion to retain both of these actions, which shall remain consolidated.

An appropriate Order this day shall issue.

ENTERED: \_\_\_\_\_  
Senior United States District Judge  
\_\_\_\_\_  
Date

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CHARLOTTESVILLE DIVISION

MONTGOMERY MUTUAL INSURANCE COMPANY,	)	CIVIL ACTION NO. 3:00CV00079
	)	)
Plaintiff,	)	
	)	
v.	)	
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DIANA F. DYER and GREGORY DYER,	)	
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Defendants.	)	
_____	)	
DIANA F. DYER,	)	CIVIL ACTION NO. 3:00CV00091
	)	(consolidated under 3:00CV00079)
Plaintiff,	)	
	)	
v.	)	
	)	
LEE CURTIS INSURANCE SERVICE, INCORPORATED; and MONTGOMERY MUTUAL INSURANCE COMPANY,	)	<u>ORDER</u>
	)	)
Defendants.	)	
_____	)	JUDGE JAMES H. MICHAEL, JR.

By order dated November 17, 2000, case number 3:00CV00079 was referred to the presiding United States Magistrate Judge for proposed findings of fact and a recommended disposition of dispositive motions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(B). Case number 3:00CV00091 also was referred to the Magistrate Judge, by order dated November 28, 2000. Diana Dyer moved to dismiss case number 3:00CV00079, and moved to remand case number 3:00CV00091. Lee Curtis Insurance

Service, Inc. (Lee Curtis) moved to dismiss itself from case number 3:00CV00091. On January 26, 2001, the Magistrate Judge recommended denying Ms. Dyer's motions, and granting Lee Curtis's motion. No objection having been filed to the recommendation that Lee Curtis's motion be granted within ten days of the report's service upon the parties, see Fed. R. Civ. P. 72(b), that recommendation shall be accepted, Lee Curtis's motion shall be granted, and Lee Curtis shall be dismissed as a defendant in case number 3:00CV00091.

Ms. Dyer filed timely objections to the Magistrate Judge's recommendation that the court deny her motions to dismiss and to remand. Montgomery Mutual did not respond. Having fully considered the objections, the documented record, the applicable law, and for the reasons stated in the accompanying Memorandum Opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

as follows:

1. The Magistrate Judge's Report and Recommendation, filed January 26, 2001, shall be, and it hereby is, ACCEPTED;
2. Diana Dyer's objections, filed February 2, 2001 in the lead case (3:00CV00079), shall be, and they hereby are, OVERRULED;
3. Lee Curtis's Motion to Dismiss, filed January 16, 2001 in case number 3:00CV00091, shall be, and it hereby is, GRANTED;
4. Lee Curtis shall be, and it hereby is, DISMISSED as a defendant in case number 3:00CV00091;
5. Diana Dyer's Motion to Remand, filed December 12, 2000 in case number

3:00CV00091, shall be, and it hereby is, DENIED;

6. Diana Dyer's Motion to Dismiss, filed November 7, 2000 in case number 3:00CV00079, shall be, and it hereby is, DENIED;

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record and to Magistrate Judge Crigler.

ENTERED: \_\_\_\_\_  
Senior United States District Judge  
\_\_\_\_\_  
Date