

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

VIRGINIA FARM BUREAU)	
MUTUAL INSURANCE COMPANY,)	Civil Action No. 7:03cv00122
Plaintiff)	
v.)	
)	
JOHNSON ALEXANDER)	<u>MEMORANDUM OPINION</u>
SUTHERLAND)	
)	
and)	By: Hon. Samuel G. Wilson
)	Chief United States District Judge
CARIANGELI LEON)	
Defendants.)	

Pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, Virginia Farm Bureau Mutual Insurance Company (“Virginia Farm Bureau”), plaintiff, has brought an action for declaratory relief against defendants Johnson Alexander Sutherland and Cariangeli Leon. Virginia Farm Bureau asserts that it has no obligation to provide automobile liability coverage to Sutherland or to defend Sutherland against claims arising out of an accident because Sutherland substantially breached the insurance agreement by failing to provide timely notification of the accident. Since the parties are citizens of different states and the matter in controversy exceeds \$75,000, this court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. The matter is before the court on Sutherland’s and Leon’s motions to dismiss, asserting that the court should exercise its discretion to decline to hear the case. The court finds that federal jurisdiction over this action is appropriate and denies defendants’ motions.

I.

Virginia Farm Bureau issued to Sutherland an automobile liability insurance policy. On November 11, 2000, Sutherland, while operating a motor vehicle, struck Leon, a pedestrian. Virginia

Farm Bureau asserts that Sutherland did not notify them of this accident until July 8, 2002—nearly twenty months after the accident occurred. On November 7, 2002, shortly before the two-year statute of limitations expired, Leon filed a suit against Sutherland in the Circuit Court of Montgomery County, Virginia, seeking \$500,000 in damages, and on February 21, 2003, Virginia Farm Bureau brought the present action in federal court, contending that Sutherland’s failure to timely notify it constituted a substantial breach of the insurance policy thereby relieving Virginia Farm Bureau of its obligation to defend and indemnify. The defendants now move for the court to dismiss the case, arguing the court should decline to exercise jurisdiction.

II.

Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure, federal courts have discretion to decline to exercise jurisdiction over declaratory judgment action, even when the action otherwise satisfies the subject matter jurisdiction requirements. To guide this discretion, the Fourth Circuit has articulated a process in which district courts should first consider the usefulness of a declaratory judgment action, then consider the countervailing interests of federalism, efficiency, and comity. This court finds that declaratory relief in the present case would serve a useful purpose and that the concerns of federalism and efficiency do not weigh against it; consequently, the court denies the defendants’ motions to dismiss.

The Declaratory Judgment Act provides that a court “may declare the rights and other legal relations of any interested party seeking such a declaration . . .” 28 U.S.C. § 2201. The Supreme Court has “repeatedly characterized the Declaratory Judgment Act as ‘an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant.’” Wilton v. Seven Falls Co., 515

U.S. 277, 287 (1995) (quoting Public Serv. Comm'n of Utah v. Wycoff Co., 344 U.S. 237, 241 (1952)). To help channel this discretion, the Fourth Circuit has articulated several factors that courts should consider when deciding whether to exercise jurisdiction over a declaratory judgment action.

Ordinarily, “a federal district court should . . . entertain a declaratory judgment action within its jurisdiction when it finds that the declaratory relief sought (i) ‘will serve a useful purpose in clarifying and settling the legal relations in issues’ and (ii) ‘will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.’” Nautilus Ins. Co. v. Winchester Homes, Inc., 15 F.3d 371, 375 (4th Cir. 1994) (quoting Aetna Cas. & Sur. Co. v. Quarles, 92 F.3d 321, 325 (4th Cir. 1937)).¹ After considering these two factors, numerous courts have used federal declaratory judgment actions “to resolve disputes over liability insurance coverage, even in advance of a judgment against the insured on the underlying claim for which coverage is sought.” Id. (citing Stout v. Grain Dealers Mut. Ins. Co. 307 F.2d 521 (4th Cir. 1962); Farm Bureau Mut. Auto. Ins. Co. v. Daniel, 92 F.2d 838 (4th Cir. 1937)). In approving the use of declaratory relief for a liability insurance coverage issue, the Fourth Circuit reasoned that

the respective interests and obligations of insured and insurers, when disputed, thus require determination much in advance of judgment against the insured since they will designate the bearer of ultimate liability in the underlying cases and hence the bearer of the onus and risks of settlement . . . To delay resolution of this controversy until the underlying suit against the insured proceeds to judgment . . . would prevent the litigants from shaping a settlement strategy and thereby avoiding unnecessary costs. Federal declaratory judgment relief was intended to avoid precisely the accrual of avoidable damage to one not certain of his rights.

¹Wilton reversed the portions of Nautilus Ins. Co. dealing with appellate standards of review. However, the factors articulated by Nautilus Ins. Co. remain useful. Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co., 139 F. 3d 419, 423-24 (4th Cir. 1998).

Nautilus, 15 F.3d at 376 (quoting ACandS, Inc. v. Aetna Cas. & Sur. Co., 666 F.2d 819, 823 (3rd Cir. 1981)). In the present case, by defining Virginia Farm Bureau's duties to Sutherland, declaratory relief will clearly serve a useful purpose and terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

Even when declaratory relief otherwise would be appropriate, however, "consideration of federalism, efficiency, and comity should also figure into the discretionary balance, and may, in certain circumstances, require the federal court to refuse to entertain the action, even when the declaratory relief would serve a useful purpose." Nautilus Ins. Co. 15 F.3d at 376. Consequently, when deciding whether to exercise jurisdiction over a declaratory judgment action, a court may consider "(1) whether the state has a strong interest in having the issues decided in its courts; (2) whether the state courts could resolve the issues more efficiently than the federal courts; (3) whether the presence of 'overlapping issues of fact or law' may create unnecessary 'entanglement' between the state and federal courts; and (4) whether the federal action is mere 'procedural fencing' in the sense that the action is merely the product of forum-shopping." United Capitol Ins. Co. v. Kapiloff, 155 F.3d 488, 493 (4th Cir. 1998) (citing Nautilus Ins. Co., 15 F.3d at 377).

The first factor, the state's interest in deciding the issues in its own courts, does not support the dismissal of the present claim. Although Virginia has an interest in "having the most authoritative voice speak on the meaning of applicable law, and that voice belongs to the state courts when state law controls the resolution of the case," Mitcheson v. Harris, 955 F.2d 235, 237-38 (4th Cir. 1992), Virginia's interest "is most significant when the issues involved are novel or 'likely to break new

ground.”” Hartford Cas. Ins. Co. v. Wugin, 247 F. Supp. 2d 723, 727 (D. Md. 2003) (quoting Kapiloff, 155 F.3d at 494); see also Nautilus Ins. Co., 15 F.3d at 378 (“We think that such a requirement that the state law issues be ‘difficult’ or ‘unsettled’ is implicit in Mitcheson, which emphasized repeatedly that the particular state-law questions raised were ‘close,’ ‘difficult,’ and ‘problematic.’”). In the present case, the Virginia courts have extensively examined the issue of whether an insured has timely notified the insurer. See e.g. State Farm Cas. Co. v. Scott, 372 S.E.2d 383 (Va. 1988); Lord v. State Farm Mut. Auto. Ins. Co., 295 S.E.2d 796 (Va. 1982); State Farm Mut. Auto. Ins. Co. v. Douglas, 148 S.E.2d 775 (Va. 1966). Consequently, the issue presented in this action is not novel and Virginia accordingly has no exceptional, counter-veiling interest in litigating the issue in its own courts.

The second factor, whether the state court can more efficiently resolve the matter, similarly does not support dismissal of this action. While “there exists a state interest, grounded in the ‘pragmatic concerns of efficiency and comity’ in resolving all litigation stemming from a single controversy in a single court system,” Glenmont Hill Associates v. Montgomery County, 291 F. Supp. 2d 394, 399 (D. Md. 2003), the complete lack of overlap between the issues presented in the state proceeding (whether Sutherland was negligent and the extent of Leon’s damages causally related to any negligence) and the coverage issue presented in the present action (did Sutherland timely notify Virginia Farm Bureau) insures that the two proceedings will not be duplicitous or unreasonably inefficient. See Nautilus, 15 F.3d at 379-80 (“We are satisfied that there is no significant overlap in the issues of fact that must be decided to resolve these two separate and independent legal controversies.”).

Furthermore, the federal litigation will not produce unnecessary entanglement between the federal and state court systems, the third factor courts may consider. Once again, the lack of overlapping issues of fact or law between this coverage action and the underlying state tort action makes the threat of entanglement quite remote.

Finally, Virginia Farm Bureau in not using this federal declaratory action as a procedural fencing device in the present case. The issues presented in the state forum differ from those presented in the federal forum, thus “[t]his is not a case in which a party has raced to federal court in an effort to get certain issues that are already pending before the state courts resolved first in a more favorable forum.”

Id. at 380. Furthermore, there is no indication that

this declaratory action was filed in an effort to obtain a federal forum in a case not otherwise removable. Instead, this action was filed in an entirely proper effort to obtain prompt resolution of a dispute over a liability insurer’s obligation to defend and indemnify its insured against certain tort claims then being pressed against it in state court—a dispute that was separate and independent from the ongoing litigation in the state courts, and particularly appropriate for early resolution in a declaratory action.

Id.

Defendants rely upon Twin City Fire Ins. Co. v. L. H. Moore, Inc. Civ. Action No. 97-545-R (J. Turk, Nov. 24, 1997) to argue that federal jurisdiction over the declaratory judgment action is an inefficient use of judicial resources. However, in that case, the insurer argued that the policy did not cover damages arising out of the maintenance, management, or use of premises owned, operated, managed, or rented by the insured and that all of the damages arose from such circumstances. Consequently, the declaratory judgment action required the court to consider causation issues—issues

also presented in the state tort action. Therefore, exercising federal jurisdiction in that case would have resulted in duplicitous litigation and unnecessary entanglement. However, in the present case, these concerns are not present.

In the present case, declaratory relief would serve a useful purpose and afford relief from uncertainty. Furthermore, concerns about federalism, efficiency, and comity do not weigh against this court exercising jurisdiction over the action. Consequently, defendants' motions to dismiss are denied.

III.

For the reasons stated, the court denies the defendants' motions to dismiss.

ENTER this February _____, 2004.

Chief United States District Judge

