

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CENTURY INDEMNITY COMPANY,)
)
Plaintiff,)
)
v.) Civil Action No. 03-204-SLR
)
THE PYRITES COMPANY, INC.,)
and THE HOME INSURANCE)
COMPANY,)
)
Defendants.)

MEMORANDUM ORDER

At Wilmington this 2nd day of October, 2003, having reviewed the motion to dismiss and alternative motion to stay the action filed by defendant The Pyrites Company, Inc., as well as the papers submitted in connection with said motion;¹

IT IS ORDERED that said motion (D.I. 9) is granted for the reasons that follow:

1. On February 19, 2003, plaintiff Century Indemnity Company ("Century") filed a declaratory judgment action against defendants The Pyrites Company, Inc. ("Pyrites") and The Home Insurance Company ("Home") seeking declaratory relief relating to an insurance dispute. (D.I. 1) Century is a Pennsylvania corporation and successor to CCI Insurance Company, which is a successor, in turn, to Insurance Company of North America. (D.I.

¹Defendant The Home Insurance Company filed a motion to implement at ninety-day stay commencing on March 5, 2003 and ending on June 3, 2003. (D.I. 15) This motion is now moot due to the passage of time. The court, therefore, will not address it in this memorandum order.

1 at ¶1) Century's principal place of business is in the Commonwealth of Pennsylvania. Pyrites is a Delaware corporation with its principal place of business in the State of California, and Home is a New Hampshire corporation with its principal place of business in the State of New York. (D.I. 1 at ¶¶2, 3)

2. Pyrites obtained primary general liability insurance policies from Century from February 1, 1966 through January 1, 1974. (D.I. 1 at ¶1) It also obtained liability insurance from Home. (D.I. 1 at ¶3) Pyrites now wishes to rely on its insurance coverage to manage the environmental remediation and rehabilitation costs arising from alleged solid and liquid waste disposal on (1) property once owned by Pyrites in Wilmington, Delaware where Pyrites extracted copper and cobalt from pyrite ore (the "Potts Site"); and (2) property adjacent to the Potts Site in Wilmington, Delaware (the "Halby Site"). (D.I. 1 at ¶¶7, 19) Specifically, Pyrites seeks reimbursement from Century both for the defense, investigation, and remediation costs incurred to date for the Potts and Halby Sites and for future expenses relating to these properties. (D.I. 10 at 1) In response to Pyrites's request for coverage, Century denies responsibility for the type of property damage at the Potts and Halby Sites under the terms of the policies.

3. Prior to the instant lawsuit, Pyrites initiated an action against Century in the Philadelphia Court of Common Pleas

by writ on February 3, 2003 ("the Philadelphia Action"). (D.I. 10) Pyrites then filed its complaint in the Philadelphia Action on February 24, 2003 asserting causes of action for bad faith against Century and breach of contract and breach of fiduciary duty against both Century and Home. (D.I. 10)

4. On March 21, 2003, Pyrites filed a motion to dismiss the instant case pursuant to Federal Rule of Civil Procedure 12(b)(6) based on the prior filed Philadelphia Action and, in the alternative, a motion to stay this action pending resolution of the Philadelphia Action. (D.I. 9) The court has jurisdiction to review this motion pursuant to 28 U.S.C. § 1332, diversity of citizenship. (D.I. 1 at ¶5)

5. According to the Third Circuit, "[t]he cases involving declaratory judgment actions brought by insurers create a confusing patchwork." Terra Nova Ins. Co., Ltd., v. 900 Bar, Inc., 887 F.2d 1213, 1221 (3d Cir. 1989). The Third Circuit noted that while some courts analyze the issue under the Federal Declaratory Judgment Act (the "Act"), other courts apply the Colorado River Water Conservation District v. United States exceptional circumstances analysis. Id. The Supreme Court held as a general rule in Colorado River that "as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal Court having jurisdiction'"

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818 (1976). The Supreme Court further characterized this rule as a “virtual unflagging obligation of the federal courts to exercise the jurisdiction given them.” Id.

Nonetheless, it recognized that there are limited circumstances in which a federal court may defer to pending parallel state court proceedings based on considerations of “wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.” Id.

6. The Third Circuit has clarified that the obligation of the federal court to exercise jurisdiction does not exist in a declaratory judgment action based on the terms of the Act itself. Terra Nova, 887 F.2d at 1222. “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.” 28 U.S.C. § 2201 (2003) (emphasis added). In light of this permissive “may” language, the Act gives federal district courts statutory discretion in deciding whether to entertain a declaratory judgment action. Terra Nova, 887 F.2d at 1222. The Third Circuit set forth general guidelines that a district court should consider in exercising its discretion under the Act: (1) whether the issues in controversy between the

parties are foreclosed under the applicable substantive federal law and whether these issues may be settled better in the proceeding pending in the state court; (2) the likelihood that the declaration will resolve the uncertainty of obligation which gave rise to the controversy; (3) the convenience of the parties; (4) the public interest in a settlement of the uncertainty of obligation; and (5) the availability and relative convenience of other remedies. Id. at 1225 (citations omitted). The Third Circuit also noted that "courts look with disapproval upon any attempt to circumvent the laudable purposes of the Act, and seek to prevent the use of the declaratory action as a method of procedural fencing, or as a means to provide another forum in a race for res judicata." Id. (citing 6A J. Moore, J. Lucas & G. Girthier, Jr., *Moore's Federal Practice* ¶ 57.08[5], at 57-50 (2d ed. 1987) (footnote omitted)).

7. Pyrites claims that Century filed the instant suit in an attempt to forum shop and needlessly increase the litigation costs to the parties. Consequently, Pyrites requests the court to use its discretionary authority under the Act and to dismiss this action as duplicative and piecemeal litigation. In response, Century maintains that the court should exercise its discretion in favor of Century and not dismiss the instant action because the Terra Nova factors all weigh in favor of jurisdiction in the District of Delaware.

8. Mindful of its discretion in deciding whether to entertain the instant declaratory judgment suit under the Act, the court will analyze each factor recommended by the Third Circuit in Terra Nova. Considering the first and second Terra Nova factors, the court does not agree with Century that it is better able to determine Century's obligations under the policies than the Philadelphia Court of Common Pleas. According to the Pennsylvania Supreme Court, Pennsylvania state courts do not have jurisdiction to render declaratory judgments unless all interested parties are joined under the Pennsylvania Declaratory Judgment Act. See Vale Chemical Co. v. Harford Accident and Indemnity Co., 512 Pa. 290 (1986). Although Century argues that the Delaware Department of Natural Resources and Environmental Control, the Environmental Protection Agency, and Karl Goos² (the "third parties") are necessary to the Philadelphia Action and presently are not joined as parties, thereby precluding declaratory judgment by the Philadelphia Court of Common Pleas, the court is unclear how these third parties would be impacted by a determination of Century's obligations to Pyrites. In Vale

²The Delaware Department of Natural Resources and Environmental Control initiated proceedings against Pyrites in 1993 to investigate and remediate ground and water contamination on the Potts Site. (D.I. 1 at ¶10) The Environmental Protection Agency identified Pyrites as a "potentially responsible party" in 1997 for environmental contamination found at the Halby Site. (D.I. 1 at ¶19) Karl Goos is the present de facto owner of the Potts Sites, which was formerly owned by Pyrites. (D.I. 1 at ¶9)

Chemical Company v. Hartford Accident and Indemnity Company, 512 Pa. 290 (1986), the Pennsylvania Supreme Court held that a tort plaintiff in a personal injury claim against an insured has an interest in seeing that an insurance company pays the judgment against its insured. As such, the Vale court found that the tort plaintiff must be joined as an indispensable party before declaratory relief may be litigated between an insured and an insurer under the Act. The court notes that the instant third parties, unlike the tort plaintiff in Vale, are not involved in any form of a personal injury suit against Pyrites. They simply have an interest in ensuring that the Potts and Halby Sites are properly rehabilitated from solid and liquid waste. They will not be the downstream recipients of any dollars collected under the alleged insurance policy from Century. The court, therefore, concludes that Pyrites and Century are the only true interested parties, and they are properly before the Philadelphia Court of Common Pleas in the Philadelphia Action. Necessarily then, the court finds that the Philadelphia Court of Common Pleas has jurisdiction to grant declaratory relief to Century.

9. Turning to the third Terra Nova factor, the court does not find that the Delaware District Court presents a more convenient forum than the Philadelphia Court of Common Pleas. While Century contends that the contaminated sites, likely witnesses, and evidence concerning the investigation and

remediation of the sites are all located in the State of Delaware, the court understands the nature of the instant dispute to center on insurance coverage. Thus, the court anticipates that trial will focus on witnesses and documents from Pyrites and Century, each having their principal places of business outside the State of Delaware. Moreover, if Delaware witnesses or evidence concerning the Potts or Halby Sites become necessary to the adjudication of the insurance coverage dispute, Delaware is located within commuting distance of the City of Philadelphia. Consequently, the court does not believe that travel to the Philadelphia Court of Common Pleas will be unduly burdensome.

10. Regarding the fourth Terra Nova factor, the court does not deem that the District of Delaware has any greater interest in adjudicating the instant case than the State of Pennsylvania. Pyrites is incorporated under the laws of the State of Delaware, but Century is incorporated under the laws of the Commonwealth of Pennsylvania. As well, the issue involves declaratory relief under the terms of an alleged insurance contract, not one related to contamination and remediation of Delaware land. Accordingly, the court finds that this factor favors dismissing the instant suit in favor of the Philadelphia Court of Common Pleas forum.

11. Finally, despite Century's argument that declaratory relief is not available to the parties in the Philadelphia Action because not all interested parties are joined, the court

explained above that it does not find this argument to have merit. To reiterate, the court finds that the only indispensable parties to this insurance coverage dispute are Century and Pyrites. Additionally, the court believes that Century may file a counterclaim against Pyrites in the Philadelphia Court of Common Pleas to address its request for declaratory relief. Hence, the court concludes that this fifth Terra Nova factor falls on the side of dismissing the instant litigation.

12. In summary, because the court finds that all Terra Nova factors favor dismissing the instant declaratory judgment action, the court grants Pyrites's motion to dismiss.

Sue L. Robinson
United States District Judge