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

BUCHANAN INGERSOLL & ROONEY, P.C.,	)	
Plaintiff,	)	
v.	)	2:17cv1113
	)	**Electronic Filing**
KEITH SOLAR, **ROBERT PARKS** and **ROBERT EDMUNDS**,	)	
Defendants.	)	

MEMORANDUM ORDER

November 20, 2017

Plaintiff, Buchanan Ingersoll & Rooney, P.C. ("BIR PC"), has brought a Declaratory Judgment Action pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* (the "Act") against Defendants, Keith Solar ("Solar"), Robert Parks ("Parks"), and Robert Edmunds ("Edmunds") (collectively "Defendants") seeking a declaration regarding Defendants' right to payment of unused vacation upon their termination of their employment with Buchanan Ingersoll & Rooney, LLC ("BIR LLC"). Jurisdiction is predicated upon diversity of citizenship under 28 U.S.C. § 1332. Defendants have moved to dismiss BIR PC's Complaint requesting, *inter alia*, that this Court decline to exercise jurisdiction under the Declaratory Judgment Act. For the reasons that follow, the Court will decline to exercise jurisdiction under the Declaratory Judgment Act and dismiss this action without prejudice to the parties' right to fully litigate these matters in the California Superior Court.

BIR PC set up a Limited Liability Partnership, BIR LLP, in order to provide legal services in the State of California. Compl. ¶ 15; Declaration of Keith R. Solar ("Solar Decl."), ¶ 4. Solar and Edmunds joined the San Diego, California Office of BIR LLC in 2007, Solar as a voting Shareholder and Edmunds as an associate. Compl. ¶¶ 13 & 24. Parks joined the San

Diego, California Office of BIR LLC in 2011 as a Participating Shareholder. Compl. ¶ 18. Each of the Defendants executed an Employment Agreement with BIR PPC. Compl. ¶¶ 14, 20 & 26.

On or about May 31, 2017, Defendants left the employment of BIR LLC and started their own law firm. Solar Decl. ¶ 7; Declaration of Robert K. Edmunds ("Edmunds Decl."), ¶ 5. After the Defendants resigned, they requested payment for accrued vacation pursuant to California law, while BIR PC contended that such unused vacation was forfeited under the Employment Agreement. *See* Complaint generally. The parties began settlement discussions during which BIR PC filed this lawsuit. Defendants then filed a lawsuit for damages in the Superior Court in San Diego County, California. Solar Decl. ¶¶ 34 & 35; Declaration of Robert J. Parks ("Parks Decl.") ¶ 25.

This Court has diversity jurisdiction and normally would be required to exercise it, but the Declaratory Judgment Act does not mandate that federal district courts exercise jurisdiction over every declaratory judgment action. *See State Auto. Ins. Companies v. Summy*, 234 F.3d 131, 133 (3d Cir. 2000). Rather, the Act provides that:

> 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. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a) (emphasis added). The Act, therefore, contemplates that district courts will exercise discretion in determining whether to entertain such actions.

The unique characteristics of the Act were first made clear by the Supreme Court in *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942), finding that "although the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act . . . it was under no compulsion to exercise that jurisdiction." *Id.* at 494. In the action involving a dispute between insurance carriers, the Court further stated:

> 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.

Id. at 495.

In *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), the Supreme Court reaffirmed *Brillhart's* standard of broad discretion stating: "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." *Id.* at 288. The statute "confers a discretion on the courts rather than an absolute right upon the litigant." *Id.* at 287; *see also State Auto Ins. Cos. v. Summy*, 234 F.3d at 136. Therefore, district courts possess discretion in determining whether to entertain a declaratory judgment action, even when the suit otherwise satisfies the prerequisites for subject matter jurisdiction. *See Munich Welding, Inc. v. Great Am. Ins.*, 415 F. Supp. 2d 571, 575 (W.D. Pa. 2006).

In *United States v. Commonwealth of Pennsylvania, Department of Environmental Resources*, 923 F.2d 1071 (3d Cir. 1991), the Third Circuit applied a limiting factor from *Brillhart* to draw a distinction between declaratory judgment actions that district courts should entertain, and those in which jurisdiction ought to be declined. *Id.* at 1075. It concluded that the district court did not have open-ended discretion to decline jurisdiction over a declaratory judgment action when the issues included: (a) federal statutory interpretation; (b) the government's choice of a federal forum; (c) an issue of sovereign immunity; or, (d) inadequacy of the state proceeding. *Department of Environmental Resources*, 923 F.2d at 1076-79. None of the above-mentioned elements are present here.

In addition, the United States Court of Appeals for the Fourth Circuit has stated "[i]n declaratory judgment actions Congress has afforded the federal courts a freedom not present in

ordinary diversity suits to consider the state interest in having the state courts determine questions of state law." *Mitcheson v. Harris*, 955 F.2d 235, 238 (4th Cir. 1992). It is counterproductive, therefore, for a district court to entertain jurisdiction over a declaratory judgment action that implicates unsettled questions of state law, questions which might otherwise be candidates for certification to the state's highest court. *See Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 225 n.7 (3d Cir. 1999). Where the applicable state law is uncertain or undetermined, district courts should be particularly reluctant to entertain declaratory judgment actions. *See Auto Ins. Cos. v. Summy*, 234 F.3d at 135.

A federal court, however, should also decline to exercise its discretionary jurisdiction when doing so would promote judicial economy by avoiding duplicative and piecemeal litigation. *State Auto Ins. Cos. v. Summy*, 234 F.3d at 135, *citing Mitcheson*, 955 F.2d at 239. A district court should be particularly inclined to question its jurisdiction when there are no federal questions presented in the declaratory judgment action, such as in an action seeking to declare a party's obligations under an insurance policy. *State Auto Ins. Cos. v. Summy*, 234 F.3d at 136. Specifically, the Third Circuit noted that "the desire of insurance companies and their insureds to receive declarations in federal court on matters of purely state law has no special call on the federal forum." *Id.* This principle is especially relevant because the interest of a state "in resolving its own law must not be given short shrift simply because one party or, indeed, both parties, perceive some advantage in the federal forum." *Id.* When the state law on the matter at issue is firmly established, there is even less reason for the parties to resort to the federal courts. Certainly, unusual circumstances may occasionally justify action in federal court, but declaratory judgments in such cases should be rare. *Id.*

The Third Circuit has enumerated factors for district courts to consider when exercising discretion under the Act:

(1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy;

(2) the convenience of the parties;

(3) the public interest in settlement of the uncertainty of obligation; and

(4) the availability and relative convenience of other remedies.

See Reifer v. Westport Ins. Corp., 751 F.3d 129, 140 (3D Cir. 2014) (Citations omitted). The Court further suggested that courts "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.*

Significantly, the dispute in the instant case is not governed by federal law and there are no federal interests at issue. This weighs heavily against exercising jurisdiction over this declaratory judgment action. *Allstate Insurance Co. v. Seelye*, 198 F.Supp.2d at 631. *See also ITT Indus., Inc. v. Pacific Employers Ins. Co*., 427 F. Supp. 2d 552, 562 (E.D. Pa. 2006) (no compelling reason for a district court to exercise declaratory judgment jurisdiction when, in part, no federal issues involved). Moreover, the events or omissions giving rise to the claims between the parties are invariably centered in California. The state court of California, therefore, is perfectly capable of resolving the disputes in this matter.

Finally, while a party's objection to a district court's exercise of jurisdiction in a declaratory judgment is a factor that would support the decision to decline jurisdiction, it is not a necessary one. *State Auto Ins. Cos. v. Summy*, 234 F.3d at 136. In other words, this Court may decline jurisdiction in a declaratory judgment action *sua sponte*. *Id.*

Accordingly,

ORDER OF COURT

AND NOW, upon consideration of the Motion to Dismiss (**Document No. 11**) filed on behalf of Defendants, Plaintiff's response thereto, and the briefs filed in support thereof, in accordance with the accompanying Memorandum,

IT IS HEREBY ORDERED that the Motion to Dismiss is **GRANTED**. The Court declines to exercise jurisdiction over the Declaratory Judgment Action filed by Plaintiff and this matter is DISMISSED without prejudice to the parties' right to fully litigate these matters in a state forum. The Clerk shall mark this case closed.

s/ DAVID STEWART CERCONE
David Stewart Cercone
United States District Judge

cc: Theodore A. Schroeder, Esquire
Allison R. Brown, Esquire
Arthur H. Stroyd, Jr., Esquire
William S. Stickman, IV, Esquire

(*Via CM/ECF Electronic Mail*)