IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE NORTH RIVER INSURANCE COMPANY,	)	
Plaintiff,	)	
v.	)	*Civil Action No. 8456-VCG*
MINE SAFETY APPLIANCES COMPANY,	)	
Defendant.	)	

MEMORANDUM OPINION

Date Submitted: September 20, 2013
Date Decided: December 20, 2013

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Brian C. Ralston, Jennifer C. Wasson, and Michael B. Rush, of POTTER ANDERSON & CORROON LLP, Wilmington, Delaware; OF COUNSEL: Mark A. Packman, Gabriel Le Chevallier, Jenna A. Hudson, and Katrina F. Johnson, of GILBERT LLP, Washington, DC, Attorneys for Defendant.

GLASSCOCK, Vice Chancellor

Litigation in multiple jurisdictions in consideration of a single issue can result in gross inefficiency, and risks inconsistent judgments. This Court has the power to enjoin litigants before it from litigating in other jurisdictions, where justice and equity so require. Exercise of this power involves often-vexing problems of comity, efficiency, and fairness. Anti-suit injunctions should be entered sparingly, and only where it is clear that irreparable harm is threatened, equity supports the exercise of injunctive relief, the relief sought will be effective if entered, and comity has been fully exercised.

Before me is an unusual request. An insurer has issued policies to a safety appliances company, providing liability insurance. That company faces a multitude of personal injury claims due to alleged defects in its safety equipment, and is seeking coverage under the insurer's policies. The insurer and insured have been entangled in various courts, litigating their respective rights and responsibilities under these policies, which are governed by Pennsylvania law. Whether coverage is available under the policies depends on whether the underlying injury arose—that is, was "triggered"—under the applicable coverage periods, as a matter of Pennsylvania law. That question is currently being litigated in the United States District Court for the Western District of Pennsylvania. It is also, in a separate action, before the Delaware Superior Court. Litigation before the latter court is partially stayed pending a decision from the Pennsylvania District

Court on the "trigger" issue. Meanwhile, tort victims with whom the insured has settled are pursuing the coverage provided under the insurer's policies before a Circuit Court in West Virginia. The insured is participating in those actions, as well. Because the West Virginia litigation was later-filed, the insurer asks this Court to enjoin the insured from participating in these actions in supposed vindication of the Delaware Superior Court stay in favor of the Pennsylvania litigation.

In the matter before me, the Plaintiff, The North River Insurance Co. ("North River"), is requesting that this Court enter a permanent injunction preventing the Defendant, Mine Safety Appliances Co. ("MSA"), from prosecuting its later-filed claims in West Virginia, as well as from settling with tort plaintiffs by transferring rights to them under North River's insurance policies; assisting any claimants, absent court order, who are litigating against North River; or prosecuting any claims for coverage other than those actions pending in Pennsylvania and Delaware.[1] North River avers that, absent injunctive relief, it faces the irreparable harm of inconsistent judgments. Because this Court lacks jurisdiction over the tort plaintiffs in the pending West Virginia actions who may, under West Virginia law, continue to litigate the trigger issue in their declaratory judgment actions against North River, North River is seeking a remedy that would

[1] Compl. at 15-16 (Prayer for Relief).

be inevitably ineffective at protecting it from the risk of inconsistent judgments. Because North River has asked this Court for a remedy that will not achieve its desired result, and because "[e]quity will not do a useless thing,"[2] North River has failed to demonstrate its entitlement to injunctive relief. In addition, it would be inequitable for this Court to grant such an injunction, which would result in North River continuing to litigate issues that will define MSA's rights as an insured, without MSA being able to vigorously defend itself. Because I find that the relief requested would not prevent the irreparable harm alleged, and because, in the particular circumstances here, the relief would itself create serious equitable concerns, MSA's Motion is granted, and that of North River is denied.

I. BACKGROUND

MSA, a Pennsylvania corporation, "manufactures a variety of safety products."[3] Many users of MSA safety products have brought bodily injury claims against the company, claiming they are "suffering various respiratory diseases such as asbestosis, silicoses and coal worker's pneumoconiosis ("CWP" or "Black Lung Disease") due to MSA's respiratory protection products."[4]

[2] *Walker v. Lamb*, 259 A.2d 663, 663 (Del. 1969).
[3] Compl. ¶¶ 3-4.
[4] *Id.* at ¶¶ 4, 7.

North River is a liability insurer incorporated in New Jersey.[5] MSA bought insurance coverage from North River and additional insurers to protect against personal injury claims.[6] As a result of the alleged defects in MSA safety equipment and the resulting tort claims that the company faces, MSA has sought costs such as legal fees, the cost of judgments, and settlement amounts from its various insurers.[7] Relevant to the matter before me, MSA and North River dispute the applicability and availability of certain North River excess insurance policies offering coverage between August 1972 through April 1986,[8] and have litigated these and related issues in Pennsylvania, Delaware, and, most recently, West Virginia.[9] North River and MSA dispute not only whether North River's policies are applicable to the injuries that MSA customers have developed but also the appropriate coverage trigger applicable to coal dust claims, with North River arguing that tort plaintiffs suffering from CWP were not "injured" during the

[5] *Id.* at ¶ 2.
[6] *Id.* at ¶ 5.
[7] *Id.*
[8] *See, e.g.*, Pl.'s Op. Br. at 3 (describing the thirteen policies at issue in the Delaware Superior Court).
[9] The parties also litigated these issues in New Jersey: On May 19, 2006, Century Indemnity Company ("Century") sued MSA and various MSA insurers, including North River, in New Jersey Superior Court. Compl. ¶ 6. Century sought declaratory relief; specifically, "a declaration of the rights and responsibilities it had under excess insurance policies issued to MSA." *Id.* MSA moved to dismiss the New Jersey action in favor of litigation in the Court of Common Pleas of Allegheny County, Pennsylvania that was filed in June 2006. *Id.* at ¶¶ 7, 8. On September 20, 2006, the New Jersey Superior Court granted MSA's motion, entering an order to that effect on October 13, 2006. *Id.* at ¶ 9. On February 26, 2008, an appellate court affirmed this dismissal. *Id.* at ¶ 12.

periods for which North River's policies offer coverage.[10] The insurance policies at issue, the courts in which they are at issue, and their dates of coverage are represented graphically in Figure I. The procedural history of the various litigations at issue is tortuous, even torturous; to commend it to the reader of this Memorandum Opinion is akin to suggesting, to echo Justice Holmes, that he eat sawdust *without* butter. Nonetheless, an adumbration of that history is set out below, to the extent necessary to my decision here.

A. *The Pennsylvania Actions*

1. The Pennsylvania Federal Action

In March 2009, MSA sued North River for contract breach in the United States District Court for the Western District of Pennsylvania (the "Pennsylvania Federal Action").[11] In that litigation, MSA seeks a judgment that, in accordance with Policy JU 1225, "North River has a duty to both defend and indemnify MSA for the thousands of asbestos, silicosis and CWP claims filed against MSA."[12] North River subsequently filed a counterclaim in that action, seeking declaratory

[10] *See, e.g.*, *id.* at ¶¶ 29, 30; Johnson Aff. in Support of MSA Op. Br. Ex. 12 (North River Mot. to Dismiss or Renewed Mot. for Stay in the Circuit Court of Wyoming County) at 6 ("North River filed a motion for summary judgment that MSA could not meet its burden to prove that any CWP claimant sustained injury during the North River Policies.").

[11] Compl. ¶ 14; Ladig First Transmittal Aff. Ex. 5 (MSA's Compl. in the United States District Court for the Western District of Pennsylvania) at ¶¶ 1-3. In March 2009, MSA discontinued a writ action it had begun in September 2007 against North River in the Court of Common Pleas of Allegheny County, instead filing this suit in Pennsylvania federal court. Compl. ¶¶ 10, 14.

[12] Compl. ¶ 14.

relief regarding the parties' rights and responsibilities under Policy JU 1255.[13] North River maintains that "none of the tendered claims involve bodily injury during the time that it provided coverage and, moreover, the terms of its policy exclude coverage for the type of injuries identified in the tendered claims."[14]

2. The Pennsylvania State Action[15]

In April 2010, North River filed an action for declaratory relief against MSA and other insurers in the Court of Common Pleas of Allegheny County (the "Pennsylvania State Action," and collectively with the Pennsylvania Federal Action, the "Pennsylvania Actions").[16] Specifically, North River seeks a declaration of the parties' rights and responsibilities in regard to three excess insurance policies, Policies JU 0830, JU 0988, and JU 1123,[17] including whether the claims of MSA customers relate to injuries that were caused during the period

[13] *Mine Safety Appliances Co. v. AIU Ins. Co.*, 2011 WL 300252, at *2 (Del. Super. Jan. 24, 2011), *appeal refused*, 15 A.3d 217 (Del. 2011).
[14] *Id.*
[15] Additionally, in June 2006, MSA sued Century in the Court of Common Pleas of Allegheny County, alleging that Century had breached certain insurance contracts and acted in bad faith by not reimbursing certain cost incurred by MSA in defending against lawsuits brought by tort plaintiffs suffering from respiratory illnesses allegedly caused by MSA safety products. Compl. ¶ 7. In March 2008, after Century moved for joinder of certain MSA insurers and the Pennsylvania court granted its motion, North River was added to this litigation. *Id.* at ¶ 13. MSA, however, discontinued its claims against Century, *id.* at ¶ 17, and Century discontinued its claims against North River and certain other insurers, *Mine Safety Appliances Co.*, 2011 WL 300252, at *2. North River then moved to consolidate any remaining claims with those asserted in the Pennsylvania State Action. *Id.* The only actions pending between MSA and North River in Pennsylvania are the Pennsylvania State and Federal Actions described above. Def. Op. Br. at 3.
[16] Compl.¶ 15; *see also* Johnson Aff. in Support of MSA Op. Br. Ex. 4 (North River Compl. in the Court of Common Pleas of Allegheny County).
[17] Compl.¶ 15.

when these policies were effective.[18] MSA filed its Answer, as well as New Matter (i.e. certain affirmative defenses), Counterclaims, and Crossclaims on June 18, 2010, asserting that North River failed "to honor the contractual and legal obligations [it] owes to MSA," and acted in bad faith with respect to the CWP, asbestosis, and silicosis claims of MSA customers.[19] North River avers that the provisions of the policies at issue in Pennsylvania are "substantially similar" to Policy JU 1319.[20]

In November 2010, a federal judge authorized the use of a special discovery master to coordinate discovery in the Pennsylvania Actions; this master was appointed soon thereafter.[21] As of the time that North River filed its Complaint for permanent injunctive relief in this Court, the parties had conducted extensive discovery in the Pennsylvania Actions.[22] The parties had also filed cross-motions for summary judgment, and oral argument on the parties' motions was held March 12, 2013.[23] Issues to be resolved pursuant to the parties' cross-motions include the appropriate trigger for coverage as to coal dust claims, a matter governed by

[18] *Id.*; Johnson Aff. in Support of MSA Op. Br. Ex. 4 (North River Compl. in the Court of Common Pleas of Allegheny County) at ¶ 30 (asserting that its "policies do not provide coverage for the CWP claims tendered to North River because they do not involve any injury occurring during the period of the North River policies as required by the clear and unambiguous language of those policies").
[19] Compl. ¶ 16; Ladig First Transmittal Aff. Ex. 7 (MSA's Answer, New Matter, Counterclaims, and Crossclaims in the Court of Common Pleas of Allegheny County) at 19, ¶ 1.
[20] Johnson Aff. in Support of MSA Op. Br. Ex. 12 (North River Mot. to Dismiss or Renewed Mot. for Stay in the Circuit Court of Wyoming County) at 3.
[21] Compl. ¶ 20.
[22] *Id.*
[23] *Id.* at ¶¶ 30, 46.

Pennsylvania law,[24] and whether personal injury plaintiffs suffering from CWP were inflicted with this illness during the periods for which these excess policies offer coverage.[25]

B. *The Delaware Superior Court Action*

On June 26, 2010, while the Pennsylvania Actions were pending, MSA sued its insurers, including North River, in Delaware Superior Court (the "Delaware Superior Court Action").[26] MSA sought, in part, a declaration that North River must "defend and indemnify MSA" in accordance with several insurance policies; specifically, Policies JU 0010, JU 0139, JU 0157, JU 0158, JU 0171, JU 0653, JU 0830, JU 0988, JU 1123, JU 1225, and JU 1319.[27] Notably, Policies JU 0830, JU 0988, and JU 1123 are at issue in the Pennsylvania State Action as well, while Policy JU 1225 is also the subject of the Pennsylvania Federal Action.[28] One of the issues in the Superior Court Action is the appropriate coverage trigger, which is governed by Pennsylvania law.[29]

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[24] *Id.* at ¶ 30.
[25] *See, e.g.*, Johnson Aff. in Support of MSA Op. Br. Ex. 12 (North River Mot. to Dismiss or Renewed Mot. for Stay in the Circuit Court of Wyoming County) at 6 ("North River filed a motion for summary judgment that MSA could not meet its burden to prove that any CWP claimant sustained injury during the North River Policies.").
[26] Compl. ¶ 18. I note that a Delaware Superior Court opinion states that this action was filed on July 26, 2010. *Mine Safety Appliances Co. v. AIU Ins. Co.*, 2011 WL 300252, at *3 (Del. Super. Jan. 24, 2011), *appeal refused*, 15 A.3d 217 (Del. 2011).
[27] Compl. ¶ 18.
[28] *Id.*
[29] *Id.* at ¶¶ 30, 46.

In January 2011, the Delaware Superior Court granted North River's motion to stay the proceedings in favor of the pending Pennsylvania Actions.[30] Although MSA sought an appeal of this decision, the Superior Court denied its motion for certification and the Delaware Supreme Court refused to accept its interlocutory appeal.[31]

MSA subsequently moved to lift the stay for purposes of conducting discovery as to all defendants except North River and Allstate—the parties against which it was also litigating in Pennsylvania—a request that was denied by the Delaware Superior Court in October 2011.[32] Thereafter, MSA again moved to lift the stay for discovery purposes, this time as to all defendants.[33] On March 16, 2012, the Superior Court granted MSA's motion in part, lifting the stay "for discovery purposes only as to all defendants . . . except for North River and Allstate."[34]

On February 20, 2013, North River moved to lift the stay as to all of its policies (including Policy JU 1319) except those at issue in the Pennsylvania

[30] *Id.* at ¶ 19; *Mine Safety Appliances Co.*, 2011 WL 300252, at *8 (finding that "the parties and issues in the Delaware Action and the Pending [Pennsylvania] Actions are substantially similar; the United States District Court for the Western District of Pennsylvania has the ability to deliver prompt and complete justice in the Pending [Pennsylvania] Actions; principles of comity between Delaware courts and Pennsylvania courts, and the substantial risk of inconsistent and conflicting rulings between the Delaware Action and the Pending [Pennsylvania] Actions, weigh in favor of a stay").
[31] Compl. ¶ 19; *see generally Mine Safety Appliances Co. v. The North River Ins. Co.*, 15 A.3d 217 (Del. 2011) (TABLE).
[32] Compl. ¶ 21.
[33] *Id.* at ¶ 22.
[34] *Id.* at ¶ 23.

Actions.[35] MSA opposed North River's motion and, on March 22, 2013, a hearing was held.[36] Thereafter, the Delaware Superior Court lifted the stay as to those North River policies that were not implicated by the Pennsylvania litigation, including Policy JU 1319, in order to allow the insurance company to participate in depositions.[37] The stay will be automatically lifted in its entirety once the cross-motions for summary judgment in the Pennsylvania Actions are resolved (presumably resolving the trigger issue, which is a matter of Pennsylvania law).[38]

C. *The West Virginia Actions*

Under West Virginia's Uniform Declaratory Judgments Act, a personal injury plaintiff may bring a declaratory action against the tort defendant's insurer, even without first obtaining a judgment against or assignment from the tort defendant, where that insurer has denied coverage.[39] Moreover, pursuant to that Act, a tort plaintiff may bring a declaratory relief action against the tort defendant's insurer subsequent to a judgment being entered against that

[35] *Id.* at ¶ 41.
[36] *Id.* at ¶¶ 42-43.
[37] *Id.* at ¶ 43.
[38] *Id.*
[39] *See, e.g.*, *Christian v. Sizemore*, 383 S.E.2d 810, 810 (W. Va. 1989) (holding that "[a]n injured plaintiff may bring a declaratory judgment action against the defendant's insurance carrier to determine if there is policy coverage before obtaining a judgment against the defendant in the personal injury action where the defendant's insurer has denied coverage"); Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay) ("West Virginia has long authorized injured plaintiffs to sue insurance companies of tortfeasors.").

defendant.[40] The following declaratory actions have been brought against North River by tort plaintiffs in West Virginia, with MSA filing crossclaims against North River in each.

1. The Moore Action

In March 8, 2010, Norman and Lisa Moore sued MSA in the Circuit Court of Wyoming County, West Virginia, alleging that Norman Moore had developed CWP because of "the hidden defects in and the inadequate warnings provided with the MSA respirators" (the "Moore Action").[41] The Moores and MSA agreed to a confidential settlement in May 2012, which included an assignment of North River Policy JU 1319 and a release from liability as to MSA.[42] Subsequently, on May 24, 2012, the Moores filed an amended complaint against North River seeking declaratory relief and enforcement of their settlement.[43] MSA moved to submit crossclaims against North River, which the court granted; MSA thereafter sought,

[40] *Price v. Messer*, 872 F. Supp. 317, 319 (S.D.W. Va. 1995) (noting that the state court permitted the tort plaintiff, who had received a judgment against a tort defendant, to amend his complaint to bring a declaratory action against the defendant's insurer under the Uniform Declaratory Judgments Act); *see also id.* at 321 ("It is well-settled [under West Virginia] law that an injured plaintiff may join as a co-defendant the defendant's insurance company subsequent to obtaining judgment against the insured.").
[41] Compl. ¶ 26; Johnson Aff. in Support of MSA Op. Br. Ex. 19 (Moores' Compl.) at ¶ 18.
[42] Compl. ¶¶ 27, 28.
[43] *Id.* at ¶ 27.

inter alia, a declaration that "North River Policy JU 1319 covers the Moores' claims."[44]

On December 3, 2012, North River moved to stay the Moore Action in favor of the Pennsylvania Actions.[45] After North River's motion was denied, it settled with the Moores.[46] Following settlement, North River renewed its motion to dismiss or stay MSA's cross-claims, which the court denied.[47] However, after the judge overseeing the Moore Action recused himself (at North River's request), "the Court indicated that it would give North River an opportunity to reargue the renewed Motion on July 15, 2013."[48] MSA subsequently filed a Memorandum for Stay of Action and the West Virginia court entered an order staying the Moore Action on July 19, 2013.[49]

2. The Persinger and Lambert Actions

Additional actions have been filed in West Virginia against MSA and, following settlement, against North River. Theresa Diane Persinger sued MSA on behalf of herself and as executrix of her husband's estate (the "Persinger Action"), and Jill Lambert sued MSA on behalf of herself and as administrator of her

[44] *Id.* at ¶ 28. MSA also sought "compensatory damages for the amounts incurred in the settlement and in defending the Moores' claims." *Id.*
[45] *Id.* at ¶ 32.
[46] *Id.*
[47] *Id.*
[48] Pl.'s Op. Br. at 13.
[49] MSA Supplemental Mem. at 1; Johnson Transmittal Aff. in Support of MSA Supplemental Mem. Ex. 1 (Order Granting North River Renewed Mot. for Stay).

husband's estate (the "Lambert Action," and together with the Moore and Persinger Actions, the "West Virginia Actions").[50] The plaintiffs in both of these actions "claimed that their coal miner spouses developed coal workers' pneumoconiosis ("CWP") because they used respirators manufactured by MSA during their coal mining careers, and these respirators allegedly failed to protect their husbands from the coal mine dust."[51] Following settlement with MSA, which included a cash sum to be paid by MSA, an assignment of insurance proceeds under North River Policy JU 1319, and a release,[52] both tort plaintiffs amended their original complaints to sue North River, seeking a declaration that North River must provide these parties with insurance coverage pursuant to Policy JU 1319 for their claims against MSA; the parties also sought enforcement of their settlement.[53] In March 2013, the Circuit Court of Wyoming County granted MSA's motion to file crossclaims against North River and MSA thereafter sought declaratory relief.[54] The Persinger and Lambert Actions have been consolidated for pre-trial purposes.[55]

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[50] Compl. ¶ 34.
[51] Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay).
[52] *Id.*
[53] Compl. ¶ 34; *see also* Ladig First Transmittal Aff. Ex. 15 (Persinger Am. Compl.), Ex. 16 (Lambert Am. Compl.).
[54] Compl. ¶ 37.
[55] Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay) (noting that "all parties agreed to April 2014 trial dates for the two cases").

Following briefing and oral argument in the Cross-Motions before me, North River's motion to dismiss or stay the Persinger and Lambert Actions was denied by the West Virginia court.[56] That court found that "the Pennsylvania and Delaware actions will not fully and finally resolve the plaintiffs' claims against North River" as the Delaware and Pennsylvania courts "are not able to offer the relief sought by plaintiffs [in West Virginia]: enforcement of the settlement agreement and payment by North River of the assignment amounts."[57] Further, the court determined that the requested "indefinite stay" was "not in the interest of justice" because the Pennsylvania and Delaware litigation had been pending for years and "[i]t would be prejudicial to the plaintiffs to delay the [Persinger and Lambert Actions] for years only to find that the earlier-filed litigation in Pennsylvania and Delaware did not resolve the matters in controversy and a trial in West Virginia was needed."[58] As to MSA's involvement in the Persinger and Lambert Actions, the court found that,

> because plaintiffs' claims against North River will proceed, MSA should be allowed to participate in the cases because the validity of the insurance assignment in the settlement agreement with plaintiffs and the meaning of its insurance policy with North River are going to be adjudicated. Allowing MSA to participate in these cases, moreover, is in the interests of judicial economy and is fundamentally

[56] *Id.*
[57] *Id.*
[58] *Id.*

> fair given that MSA was originally sued in the tort actions and later settled the West Virginia plaintiffs' tort claims.[59]

North River appealed this decision to the West Virginia Supreme Court on September 23, 2013, filing a Verified Petition for a Writ of Prohibition.[60]

3. Additional Assignments

In its Complaint in this action, North River alleges that MSA continues to assign rights under its policies, and that it "expects that MSA will continue to pursue additional lawsuits against North River in West Virginia and potentially other states."[61] Since briefing and oral argument on the Cross-Motions before me, MSA has settled with and assigned rights to at least one additional West Virginia tort plaintiff, who has subsequently sought declaratory relief against North River, similar to the tort plaintiffs in the Moore, Persinger, and Lambert Actions.[62]

D. *The Delaware Court of Chancery Action*

On April 4, 2013, North River filed a Verified Complaint (the "Complaint"), alleging that "MSA is attempting to obtain in the West Virginia Action[s] a declaration of North River's obligations under North River Policy JU 1319 on the same issue on which it instituted and has prosecuted claims for insurance coverage in both Pennsylvania and Delaware," and that, consequently, North River faces

[59] *Id.*
[60] Letter from MSA (Sept. 24, 2013).
[61] Compl. ¶¶ 39-40.
[62] Ladig Third Transmittal Aff. Ex. 2 (McVey Am. Compl.).

"the possibility of inconsistent adjudications on the trigger issue and other obligations pursuant to [Policy] JU 1319."[63] Accordingly, North River is seeking permanent injunctive relief. Specifically, North River requests that this Court enter a permanent injunction preventing MSA from prosecuting its claims in West Virginia; assisting, in any material way, claimants who litigate against North River (except if court ordered); "filing and/or prosecuting any claims for coverage under any North River Policy" except those pending already in Pennsylvania and Delaware; and assigning to any claimants the right to recover under any North River insurance policy.[64] North River also requests attorneys' fees, as well as costs and expenses.[65] On May 3, MSA filed its Answer. On June 11, both parties moved for judgment on the pleadings. The matter was briefed, and I heard oral argument on the parties' Cross-Motions on June 25, 2013. At oral argument, I stayed the case pending the West Virginia court's consideration of North River's motion to dismiss or stay the Persinger and Lambert Actions. As described above, that motion was eventually denied.

Following the stay of the Moore Action and the denial of North River's motion to dismiss or stay the Persinger and Lambert Actions, I held a telephonic status conference with the parties on September 11, 2013. At that time, I requested

[63] Compl. ¶¶ 47-48
[64] *Id.* at 15-16 (Prayer for Relief).
[65] *Id.*

that North River and MSA submit supplemental memoranda on two issues bearing on the Cross-Motions pending before me: (1) the role of West Virginia decision *Christian v. Sizemore*[66] and (2) the impact of the West Virginia court's denial of North River's motion to dismiss or stay the Persinger and Lambert Actions. The parties submitted these supplemental memoranda on September 20, 2013. For the reasons that follow, MSA's Motion is granted and North River's Motion is denied.

II. STANDARD OF REVIEW

A motion for judgment on the pleadings under Court of Chancery Rule 12(c) will be granted "when there are no material issues of fact and the movant is entitled to judgment as a matter of law."[67] When considering cross-motions for judgment on the pleadings, "the Court must view the facts pled and the inferences to be drawn from them in the light most favorable to the non-moving party."[68] When ruling on a motion pursuant to Rule 12(c), this Court "may consider, for certain purposes, the contents of documents that are integral to or are incorporated by reference into the complaint."[69] In this matter, this includes the filings, orders, decisions, and transcripts in the Pennsylvania, Delaware, and West Virginia actions involved herein.

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[66] 383 S.E.2d 810 (W. Va. 1989).
[67] *McMillan v. Intercargo Corp.*, 768 A.2d 492, 499 (Del. Ch. 2000).
[68] *Credit Suisse Sec. (USA) LLC v. W. Coast Opportunity Fund, LLC*, 2009 WL 2356881, at *3 (Del. Ch. July 30, 2009).
[69] *In re Lukens Inc. Shareholders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999), *aff'd sub nom., Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000).

III. ANALYSIS

North River seeks a judgment that it is entitled to a permanent injunction preventing MSA from prosecuting its crossclaims in West Virginia, as well as assisting any claimants, absent court order, who are litigating against North River; prosecuting any claims for coverage other than those actions pending in Pennsylvania or Delaware; or assigning any rights to any North River policies.[70] This Court recognizes that a permanent injunction is an extraordinary form of relief.[71] To demonstrate entitlement to a permanent injunction, a plaintiff must satisfy three elements; a plaintiff must show (1) actual success on the merits of the claims; (2) that irreparable harm will be suffered if injunctive relief is not granted; and (3) that the equities support the relief requested.[72] In considering the third factor, in line with the well-established principle that "[e]quity will not do a useless thing,"[73] an injunction will "not be granted where it would be ineffective to achieve its desired result."[74] Even assuming that North River has been successful with

[70] Compl. at 15-16 (Prayer for Relief).
[71] *See, e.g*, *Sierra Club v. DNREC*, 2006 WL 1716913, at *3 (Del. Ch. June 19, 2006), *aff'd sub nom., Sierra Club v. Delaware Dep't of Natural Res. & Envtl. Control*, 919 A.2d 547 (Del. 2007) (noting that a permanent injunction constitutes "extraordinary relief"); *In re Cencom Cable Income Partners, L.P.*, 2000 WL 130629, at *7 (Del. Ch. Jan. 27, 2000) ("For a permanent injunction the factors are the same [as for a preliminary injunction], except that the plaintiff must actually succeed on the merits. This relief is extraordinary and the test is stringent.").
[72] *See, e.g., Examen, Inc. v. VantagePoint Venture Partners 1996*, 2005 WL 1653959, at *2 (Del. Ch. July 7, 2005).
[73] *Walker v. Lamb*, 259 A.2d 663, 663 (Del. 1969).
[74] *New Castle Cnty. v. Peterson*, 1987 WL 13099, at *3 (Del. Ch. June 30, 1987).

respect to factors (1) and (2), for the reasons below, the equities do not support the relief requested.

A. *North River's Request for a Permanent Injunction to Prevent MSA from Prosecuting the West Virginia Actions*

"It is well-settled that this Court is empowered to enjoin a party to an action from removing the subject of the controversy to a foreign jurisdiction by filing a later action or proceeding in a foreign forum. It is equally well-settled, however, that the exercise of such authority is discretionary in nature and should be exercised cautiously. A sense of comity owed to the courts of other states drives this caution."[75]

As "[a]n injunction should not be granted where it would be ineffective to achieve its desired result,"[76] I must consider the purpose for which North River requests that I enjoin MSA from litigating its crossclaims in West Virginia, and determine whether an injunction would be effective to protect against the threatened or ongoing harm alleged. North River characterizes the West Virginia litigation as a maneuver by MSA to circumvent the pending decisions of the Pennsylvania court as to the appropriate trigger of coal dust claims, an issue that is governed by Pennsylvania law, and an attempt to bypass application of this determination to North River Policy JU 1319, the rights of which are at issue in the

[75] *Rapoport v. Litig. Trust of MDIP Inc.*, 2005 WL 3277911, at *8 (Del. Ch. Nov. 23, 2005) (internal footnotes and quotation marks omitted).
[76] *New Castle Cnty. v. Peterson*, 1987 WL 13099, at *3 (Del. Ch. June 30, 1987).

Delaware Superior Court.[77] Consequently, North River argues that, without injunctive relief, it "will face the possibility of inconsistent adjudications on the trigger issue and other obligations pursuant to [Policy] JU 1319."[78]

Nevertheless, I have no jurisdiction over the West Virginia tort plaintiffs. Even if I grant North River's request, I cannot prevent those plaintiffs from litigating issues, including the trigger issue, against North River pursuant to West Virginia's Uniform Declaratory Judgments Act, which "authorizes courts of record to issue declarations of 'rights, status and other legal relations *whether or not further relief is or could be claimed*.'"[79] That Act is meant "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and [it] is to be liberally construed and administered."[80] In fact, the West Virginia Supreme Court of Appeals has held that "[a]n injured plaintiff may bring a declaratory judgment action against the defendant's insurance carrier to determine if there is policy coverage before obtaining a judgment against the defendant in the personal injury action where the defendant's insurer has denied

[77] *See, e.g.*, Pl.'s Op. Br. at 30 ("This Court should also enjoin MSA from prosecuting the West Virginia Actions and assisting the plaintiffs in the West Virginia Actions because MSA engineered the West Virginia disputes knowing that the Superior Court Action was still pending on the applicability of JU 1319.").
[78] Compl. ¶ 48.
[79] *Christian v. Sizemore*, 383 S.E.2d 810, 812 (W. Va. 1989) (quoting W. Va. Code § 55-13-1 (emphasis added)).
[80] *Id.* (quoting W. Va. Code § 55-13-12).

coverage."[81] Moreover, "[i]t is well-settled [under West Virginia] law that an injured plaintiff may join as a co-defendant the defendant's insurance company *subsequent* to obtaining judgment against the insured."[82] In *Price v. Messer*, for instance, the tort plaintiff received a monetary judgment against the tort defendant.[83] Following that judgment, with the court's approval, the plaintiff amended his complaint to add a declaratory action against the tort defendant's insurer under West Virginia's Uniform Declaratory Judgments Act.[84]

This, to me, undercuts North River's request for an injunction because the West Virginia action is proceeding, with or without MSA, and North River will inevitably face the risk of inconsistent judgments in Delaware and West Virginia. As such, an injunction against MSA will not be effective at shielding North River from the harm that it fears. The West Virginia plaintiffs, as tort victims, have the right, independent of any assignment, to bring a declaratory judgment suit against North River under West Virginia law, and are currently litigating such an action, which the presiding judge has declined to stay in favor of pending litigation in

[81] *Id.* at 810 (reasoning that this outcome was "consistent with the remedial purposes of the Uniform Declaratory Judgments Act"); *see also* Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay) ("West Virginia has long authorized injured plaintiffs to sue insurance companies of tortfeasors.").
[82] *Price v. Messer*, 872 F. Supp. 317, 321 (S.D.W. Va. 1995) (emphasis added).
[83] *Id.* at 319.
[84] *Id.*

Pennsylvania or stayed litigation in Delaware.[85] North River argues that these plaintiffs were assigned "the causes of action, choses in action, and other rights to pursue and receive proceeds totaling the Assignment Amount that [MSA] . . . would otherwise have under [Policy JU 1319]," and then released MSA from liability, losing thereby "the procedural remedy afforded under the West Virginia Declaratory Judgments Act that MSA possessed and assigned to them."[86] In other words, North River argues that the tort plaintiffs have no independent right, as a matter of West Virginia law, to litigate insurance coverage issues. The West Virginia court has determined otherwise;[87] an injunction, therefore, would not prevent against the risk of inconsistent judgments and would result in this Court defying the well-established principle that "[e]quity will not do a useless thing."[88]

Further, because the actions between North River and certain West Virginia tort plaintiffs will be proceeding, it would be inequitable to exclude MSA from participating in that litigation. This Court is not disposed to enter an injunction when such a remedy would deprive the party enjoined of appearing in ongoing litigation about its rights under its own insurance policy. A permanent injunction against MSA would inequitably preclude MSA from protecting its rights under

[85] *See, e.g.*, Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay).
[86] Pl.'s Supplemental Mem. at 9-10.
[87] Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay).
[88] *Walker v. Lamb*, 259 A.2d 663, 663 (Del. 1969).

North River Policy JU 1319, while North River continues to litigate, and to vigorously argue that MSA lacks coverage under this policy, in West Virginia.

I note that, as to the Moore Action, both North River and MSA have settled with the tort plaintiffs, and thus are the only remaining parties in that action. That action would present the strongest case for injunctive relief here, but has been voluntarily stayed by the parties. In light of this stay, I find that North River does not currently face the threat of irreparable harm from the risk of inconsistent decisions if I do not issue an injunction as to MSA's prosecution of this action.

Therefore, North River's request to enjoin MSA from prosecuting its crossclaims in West Virginia is denied.

B. *North River's Additional Requests for Injunctive Relief*

North River also requests that this Court enter a permanent injunction preventing MSA from (1) assisting, in any material way, claimants who litigate against North River in any jurisdiction (except if court ordered); (2) "filing and/or prosecuting any claims for coverage under any North River Policy" except those pending already in Pennsylvania and Delaware; and (3) assigning to any claimants the right to recover under any North River insurance policy.[89]

As I have already noted, under West Virginia's Declaratory Judgment Act, a personal injury plaintiff may bring a declaratory action against the defendant's

[89] Compl. at 15-16 (Prayer for Relief).

insurer where that insurer has denied coverage, even if the plaintiff has not yet obtained a judgment against the tort defendant.[90] I therefore cannot shield North River from the risk of inconsistent judgments by granting the requested forms of injunctive relief. Even if MSA were prevented, by this Court, from assisting litigants, prosecuting its claims against North River, or assigning its rights under North River's insurance policies in other jurisdictions, North River would still face the risk of inconsistent judgments, as personal injury tort plaintiffs in at least West Virginia may seek declaratory relief against North River directly, without an assignment from or judgment against MSA. Further, as I have found above, it would be inequitable for this Court to grant such an injunction, which would result in North River continuing to litigate against certain tort plaintiffs about MSA's rights as an insured party, without MSA being able to defend itself. Moreover, an injunction preventing MSA from assigning any rights under the policies to its tort victims would hamper MSA's ability to settle claims, without providing relief from the possibility of inconsistent judgments. Consequently, North River has not demonstrated its entitlement to a permanent injunction.

[90] *See, e.g.*, *Christian v. Sizemore*, 383 S.E.2d 810, 810 (W. Va. 1989) (holding that "[a]n injured plaintiff may bring a declaratory judgment action against the defendant's insurance carrier to determine if there is policy coverage before obtaining a judgment against the defendant in the personal injury action where the defendant's insurer has denied coverage"); Ladig Third Transmittal Aff. Ex. 1 (Judge Chaffin's Order Denying North River's Mot. to Dismiss or Stay) ("West Virginia has long authorized injured plaintiffs to sue insurance companies of tortfeasors.").

IV. CONCLUSION

In this Memorandum Opinion, I have not directly assessed the elements of North River's request for permanent injunctive relief because I have determined, for the reasons above, that equity does not support the relief requested. For the foregoing reasons, I grant MSA's Motion for Judgment on the Pleadings, and deny North River's Motion. An appropriate Order accompanies this Memorandum Opinion. To the extent I have denied injunctive relief with respect to the voluntarily-stayed Moore Action, that denial is without prejudice.

Figure I[1]

North River Policy	Start Date	End Date	Pennsylvania Actions	Delaware Superior Court Action	West Virginia Actions
JU 0010	3/30/1973	4/1/1976		X	
JU 0139	1/1/1976	4/1/1978		X	
JU 0157	4/1/1976	4/1/1979		X	
JU 0158	4/1/1976	4/1/1979		X	
JU 0171	4/1/1976	4/1/1979		X	
JU 0653	4/1/1979	4/1/1980		X	
JU 0830	4/1/1980	4/1/1981	X	X	
JU 0988	4/1/1981	4/1/1982	X	X	
JU 1123	4/1/1982	4/1/1983	X	X	
JU 1225	4/1/1983	4/1/1984	X	X	
JU 1319	4/1/1984	4/1/1985		X	X
522 051840 9	4/1/1985	4/1/1986		X	
XS2526	8/28/1972	4/1/1976		X	

[1] Pl.'s Op. Br. Ex. A; Def.'s Op. Br. Ex. A.