

coverage because the Cobin Policy lists Jenkins as an “Additional Driver” and the Bland Policy applies to Bland as an in-resident relative of her parents. (Dkt. No. 9 at 1.) Bland here moves the Court to abstain from exercising jurisdiction over GEICO’s declaratory judgment action, to which GEICO responds in opposition.

II. Legal Standard

“Pursuant to [the Declaratory Judgment Act], federal courts have the discretion to decide whether to hear declaratory judgment actions.” *Continental Cas. Co. v. Fuscardo*, 35 F.3d 963, 965 (4th Cir. 1994). The Declaratory Judgment Act provides:

[A]ny 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). “To determine whether to proceed with a federal declaratory judgment action when a parallel state court action is pending, we have focused on four factors”:

(1) whether the state has a strong interest in having the issues decided in its courts; (2) whether the state court could resolve the issues more efficiently than the federal court; (3) whether the presence of overlapping issues of fact or law might create unnecessary entanglement between the state and federal court; and (4) whether the federal action is mere procedural fencing in the sense that the action is merely the product of forum shopping.

Great Am. Ins. Co. v. Gross, 468 F.2d 199, 211 (4th Cir. 2006) (citing *Nautilus Ins. Co. v. Winchester Homes, Inc.*, 15 F.3d 371, 377 (4th Cir. 1994)). “The *Nautilus* factors are not a ‘mechanical checklist,’ and a district court ‘should apply them flexibly in light of the particular circumstances of each case.’” *Walker v. Liberty Mut. Ins. Co.*, No. 4:16-cv-01388-RBH, 2018 WL 573159, at *4 (D.S.C. Jan. 26, 2018) (quoting *VRCompliance LLC v. HomeAway, Inc.*, 715 F.3d 570, 573 (4th Cir. 2013)).

III. Discussion

GEICO brings three claims for declaratory relief: (1) a declaration that the Cobin Policy does not provide Jenkins or Mouzon coverage because Bland’s gunshot injury did not arise out of the “ownership, maintenance or use” of the vehicle; (2) a declaration that the Bland Policy does not provide uninsured or underinsured motorist coverage for the same reason; and (3) a declaration that, in any event, the Cobin Policy excludes coverage in excess of the minimum limits required by South Carolina law for the attempted or successful commission of a felony, and here Jenkins has been arrested and charged with assault and battery in the first degree, which is a felony under South Carolina law. (Dkt. No. 1 ¶¶ 28-39.)² Bland argues that the Court should in its discretion abstain from exercising jurisdiction over this declaratory judgment action in light of her tort claims pending in the South Carolina Court of Common Pleas. (Dkt. No. 9 at 5.)

A. *First Nautilus* Factor

The Court first considers whether the Court of Common Pleas has an interest in the issues raised in this declaratory judgment action being resolved in its own court. The district court’s “discretionary power to abstain from deciding state-law questions . . . may be exercised only when the questions of state law involved are difficult, complex, or unsettled.” *Gross*, 468 F.3d at 211. The core issue in this federal action is whether the contractual terms of the Cobin Policy or Bland Policy provide liability coverage for gunshot injuries inflicted by Jenkins or Mouzon from inside the vehicle. This issue implicates well-settled South Carolina law that district courts in this Circuit have previously applied, including on the narrow issue of when a gunshot injury inflicted from inside a vehicle on a person outside the vehicle arises from the “ownership, maintenance, or use” of the vehicle. *State Farm Fire & Casualty Co. v. Aytes*, 503 S.E.2d 744,

² Dkt. No. 11-1; S.C. Code Ann. § 16-3-600(C)(2).

745 (1998). See, e.g., *Nationwide Mut. Fire Ins. Co. v. Jeter*, No. 3:12-1759-MBS, 2013 WL 3109214, at *5 (D.S.C. June 18, 2013); *Holmes v. Allstate Ins. Co.*, 786 F. Supp. 2d 1022, 1027 (D.S.C. 2009) (PMD); *State Farm Mut. Auto. Ins. Co. v. Bookert*, 523 S.E.2d 181 (1999); *Wausau Underwriters Ins. Co. v. Howser*, 422 S.E.2d 106, 108 (1992). The relevant questions of state law are, therefore, not too difficult, complex or unsettled to warrant declining to entertain GEICO's declaratory judgment claims. The first *Nautilus* factor does not weigh in favor of abstention.

B. Second *Nautilus* Factor

The Court next reviews whether the issues in this federal action could be more efficiently resolved by the Court of Common Pleas. This requires considering “the scope of the pending state court proceeding[s], including such matters as whether the claims of all parties in interest [to the federal proceeding] can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, [and] whether such parties are amenable to process in that proceeding.” *Gross*, 468 F.3d at 212 (alterations in original, internal quotation marks omitted). Here, the issue of whether the terms of two insurance contracts provide coverage for a certain injury is not before the state court and, as a result, could not be more efficiently resolved there. See *Gross*, 468 F.3d at 212 (“After examining the scope of the pending state court proceedings [], we cannot say with any confidence that the issues raised in this federal action can better be resolved in those proceedings, or necessarily be resolved at all.”). The Court of Common Pleas, rather, is adjudicating whether Jenkins and Mouzon are liable for the torts of “assault and battery” and negligence, and, as the Court of Common Pleas noted, “GEICO has no real interest in whether Defendants [Jenkins and Mouzon] were responsible for the shooting, which is the

basis for the present tort action.” *Bland v. Jenkins, et al.*, Case No. 2018-CP-18-857, August 21, 2019 Order. Therefore, the second *Nautilus* factor does not weigh in favor of abstention.

C. Third *Nautilus* Factor

The Court next considers whether any overlapping issues of fact or law could create unnecessary entanglement between the state and federal systems. For this, the Court looks at whether “many of the issues of law and fact sought to be adjudicated in the federal action are already being litigated by the same parties in the related state court action.” *Gross*, 468 F.3d at 212. These two proceedings do not share the “same parties; rather, as the Court of Common Pleas noted when denying GEICO’s motion to stay for lack of standing, “As a threshold matter, GEICO is not a party to [the state court] action,” and “defendants [Jenkins and Mouzon] did not make appearances” in the federal action. *Bland v. Jenkins, et al.*, Case No. 2018-CP-18-857, August 21, 2019 Order. Nor, as noted, are the state court parties “already litigating”—or litigating, at all—whether the terms of the Cobin Policy or Bland Policy provide coverage under applicable South Carolina law. *See, id.* (“As noted above, the basic issue sought to be resolved here involves insurance coverage, and [the insurer] is not even a party in any of the [] state court actions[.]”). For this reason, the third *Nautilus* factor does not weigh in favor of abstention.

D. Fourth *Nautilus* Factor

Last, the Court reviews whether this federal action is being used merely as a device for procedural fencing, wherein a “party has raced to federal court in an effort to get certain issues that are already pending before the state courts resolved in a more favorable forum.” *Gross*, 468 F.3d at 212. Bland initiated her state court tort action on May 17, 2018. When GEICO initiated this federal action—ten months later, on March 18, 2019—issues of insurance coverage were not pending before the Court of Common Pleas, nor are they currently. There is, therefore, no

indication that GEICO sought to use the district court to litigate insurance coverage issues that were already before the state court. The fourth *Nautilus* factor, therefore, does not weigh in favor of abstention.

Having considered the four *Nautilus* factors individually and finding that none weighs in favor of abstention, the Court exercises its discretion to maintain jurisdiction over GEICO's declaratory judgment action.

IV. Conclusion

For the reasons set forth above, Deja Bland's motion to dismiss (Dkt. No. 8) is **DENIED**.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

October 12, 2019
Charleston, South Carolina