IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MINE SAFETY APPLIANCES COMPANY,	)	
Plaintiff,	)	
	)	C.A. No. N10C-07-241 MMJ
v.	)	
AIU INSURANCE COMPANY, et al.,	)	
Defendants.	)	

Submitted: December 3, 2011
Decided: January 24, 2011

On Defendant The North River Insurance Company's Motion to Dismiss And/Or Stay

OPINION
GRANTED IN PART, DENIED IN PART

John E. James, Esquire Michael Rush, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Of Counsel: Mark A. Packman, Esquire (argued), Gabriel J. LeChevallier, Esquire Jenna A. Hudson, Esquire, Gilbert LLP, Washington, DC, Attorneys for Plaintiff

Paul D. Brown, Esquire, Edwards Angell Palmer & Dodge LLP, Wilmington, DE, Of Counsel: Dennis O Brown, Edwards Angell Palmer & Dodge LLP, Hartford, CT, Alan S. Miller, Esquire (argued), Bridget M. Gillespie, Esquire, Picadio Sneath Miller & Norton, P.C., Pittsburgh, PA, Attorneys for Defendant The North River Insurance Company

Richard M. Beck, Esquire, Kelly A. Green, Esquire, Klehr Harrison Harvey Branzburg LLP, Joshua D. Weinberg, Esquire (argued), Michele L. Backus, Esquire, Shipman & Goodwin LLP, Washington, DC, Attorneys for Hartford Accident and Indemnity Company, First State Insurance Company and Twin City Fire Insurance Company

JOHNSTON, J.

INTRODUCTION

This case revolves around the insurance coverage for thousands of toxic tort claims that have been brought against plaintiff, Mine Safety Appliances Company ("MSA"). These claims will be referred to as the "Underlying Claims." Defendants, 31 insurance companies, provide MSA with 125 insurance policies for toxic tort liability. In this action, MSA seeks a declaration of the rights and obligations of MSA and the defendants ("Delaware Action").

Two pending actions were filed prior to the Delaware Action — one in the Pennsylvania Court of Common Pleas ("Second Pennsylvania Action"[1]); and another in the United States District Court for the Western District of Pennsylvania ("Federal Action"). The Second Pennsylvania Action and the Federal Action, when discussed together, will be referred to as the "Pending Actions." The Pending Actions involve MSA and 3 defendants named in the Delaware Action: North River Insurance Company, Allstate Insurance Company,[2] and Columbia Casualty Company. Additionally, the Pending Actions involve Century Indemnity Company, a non-party to the Delaware Action.

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[1] The action referred to as the "First Pennsylvania Action" was filed before the Second Pennsylvania Action.

[2] Successor-in-interest to Northbrook Excess and Surplus Lines Insurance Company.

In light of the Pending Actions, North River moves to dismiss or, in the alternative, stay, the Delaware Action pending resolution of the Pending Actions.

Additionally, North River moves to dismiss the Delaware Action based on *res judicata*. North River relies upon a New Jersey Superior Court decision that dismissed an action involving MSA's insurance coverage for the Underlying Claims ("New Jersey Action"), deferring to an after-filed action in the Pennsylvania Court of Common Pleas ("First Pennsylvania Action").

For the following reasons, the Court grants North River's motion to stay the Delaware Action pending resolution of the Pending Actions, and denies North River's motion to dismiss the Delaware Action based on *res judicata*.

FACTUAL AND PROCEDURAL CONTEXT

MSA, a Pennsylvania corporation licensed to do business in Delaware, produces and sells safety equipment, including respirators and heat protection clothing. Allegedly, at one time, MSA's respirators were defective and its heat protection clothing contained asbestos. Thousands of individuals have brought tort claims against MSA, claiming that, as a result

of using MSA's products, they were exposed to asbestos, silica, and coal dust, and suffered injuries.

North River, Allstate, and Columbia provide MSA with 7 first-layer excess insurance polices that cover toxic tort liability — policies that will be triggered only when MSA's non-excess policies are exhausted. The remaining defendants provide MSA with 125 second-layer excess insurance policies — policies that only will be triggered when the first-layer excess insurance polices are exhausted. At this time, the first-layer excess insurance policies have not been exhausted.

The New Jersey Action and the First Pennsylvania Action

On May 19, 2006, Century brought the New Jersey Action in the Superior Court of New Jersey, seeking declaratory judgment against MSA, North River, and the remaining defendants listed in the Delaware Action. Century sought a declaration that defendants were bound by a cost-sharing agreement created to limit exposure to the liability and costs resulting from the Underlying Claims.

On June 9, 2006, MSA brought the First Pennsylvania Action in the Pennsylvania Court of Common Pleas, alleging that Century breached several insurance contracts and acted in bad faith. MSA sought

reimbursement of the various costs and expenses stemming from the Underlying Claims.

Additionally, MSA moved to dismiss the New Jersey Action, arguing that determining the rights and obligations of the parties affected by Century's insurance policy is a dispute that belongs in Pennsylvania. The New Jersey Superior Court dismissed the New Jersey Action in favor of the First Pennsylvania Action.[3] The New Jersey Appellate Court affirmed, holding that Pennsylvania law governs the resolution of the insurance coverage issues, and finding that the Pennsylvania Court of Common Pleas could provide adequate relief.

Century counterclaimed for declaratory judgment in the First Pennsylvania Action, seeking a declaration that it is not obligated to provide coverage for the Underlying Claims. Based on *Vale Chemical Co. v. Hartford Accident & Indem. Co.*,[4] the Pennsylvania Court of Common Pleas dismissed the counterclaims.[5] In *Vale*, the Pennsylvania Supreme Court held that in a declaratory judgment action among insurers, all interested parties, including the underlying tort victims that may benefit from the

[3] *Century Indem. Co. v. Mine Safety Appliances Co.*, 2006 WL 6376215, at *4 (N.J. Super. Ct. Law Div.).
[4] 516 A.2d 684 (Pa. 1986).
[5] *Mine Safety Appliances Co. v. Century Indem. Co.*, 2007 WL 5007252, at *2 (Pa. Ct. Comm. Pl.).

insurance proceeds, must be joined to avoid dismissal.[6] Century failed to join the underlying tort victims.

Subsequently, Century joined North River, Columbia, and Allstate to the First Pennsylvania Action, claiming that they are obligated to indemnify or contribute to Century for any judgment against it in the First Pennsylvania Action. From October 2006 to July 2010, the parties engaged in extensive discovery and motion practice. As a result, many claims were settled, MSA discontinued its claims against Century, and Century discontinued its claims against North River, Columbia, and Allstate. North River has filed a motion to consolidate the few remaining claims with those in the Second Pennsylvania Action.

The Federal Action

On March 20, 2009, MSA brought the Federal Action in the United States District Court for the Western District of Pennsylvania against North River, claiming that North River breached its insurance contract with MSA. The dispute centers around a single North River policy. MSA argues that, pursuant to the policy, North River has a duty to defend and indemnify MSA for the Underlying Claims.

[6] *Vale*, 516 A.2d at 686-88.

North River brought a counterclaim for declaratory judgment, seeking a declaration of the rights and obligations of North River and MSA regarding the policy and the Underlying Claims. North River seeks a determination that it is not obligated to provide coverage for several claims that have been tendered to it. North River argues 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.

The Second Pennsylvania Action

On April 12, 2010, North River brought the Second Pennsylvania Action in the Pennsylvania Court of Common Pleas against MSA, Century, and Columbia, seeking declaratory judgment as to the rights and obligations of the parties under their insurance policies. North River also joined numerous underlying tort victims who may collect insurance proceeds from North River, Century, and Columbia. North River seeks a declaration that, for a specific period of time that persons allegedly suffered injuries from MSA's products, North River did not provide MSA with liability coverage.

On June 18, 2010, MSA counterclaimed against North River for breach of contract, alleging that North River acted in bad faith, and

crossclaimed against Allstate for breach of contract. Both claims regard the insurance liability coverage for the Underlying Claims.

Discovery and motion practice have been underway in the Second Pennsylvania Action since May 2010.

The Delaware Action

MSA filed the Delaware Action on July 26, 2010. MSA seeks a declaration of the rights and obligations of the 31 defendants concerning 125 insurance policies.

On September 2, 2010, MSA filed an Amended Complaint. In the Amended Complaint, MSA explains that defendants are first-layer or second-layer excess insurers that provide MSA with coverage for the Underlying Claims. MSA asserts that the defendants "have disputed or will dispute their obligations under the Policies to cover the Underlying Claims." Through its Amended Complaint, MSA seeks the same relief — a declaration of the rights and obligations of the 31 defendants regarding the policies that cover the Underlying Claims.

DISCUSSION

A. North River's Motion to Dismiss or Stay the Delaware Action

Parties' Contentions

North River argues that, pursuant to the *McWane* Doctrine, because the Pending Actions were filed before the Delaware Action and involve similar parties and issues, the Court should exercise its discretion in favor of dismissing or staying the Delaware Action. North River points to principles of comity, and asserts that the United States District Court for the Western District of Pennsylvania and the Pennsylvania Court of Common Pleas are capable of delivering prompt and complete justice to the claims presented in the Delaware Action.

MSA responds that its choice of forum warrants deference, and North River cannot establish that the *McWane* Doctrine applies. Assuming, *arguendo*, the *McWane* Doctrine does apply, MSA argues that the Delaware Action does not involve substantially similar parties to the Pending Actions. The Delaware Action names 31 defendants, and the Pending Actions involve 4 insurers — only 3 of which are defendants in the Delaware Action. Further, MSA contends that the claims in the Pending Actions and the Delaware Action are not substantially similar. The claims in the Pending

Actions dispute the terms of 7 insurance polices, while the claims in Delaware Action dispute the terms of 125 insurance policies.

The McWane *Doctrine*

"Delaware courts, in the interests of comity and judicial economy, normally will stay an after-filed suit in Delaware when a previously filed suit stating similar claims is pending in a court of another state."[7] "[A]s a general rule, litigation should be confined to the forum in which it is first commenced, and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing."[8]

When faced with an after-filed suit in Delaware, the Court's primary goals, with respect to the entirety of claims that have been filed, are to maximize the economy of judicial effort and the efficiency of the administration of justice and to prevent unwarranted delay.[9] Accordingly, the Court's discretion "should be exercised freely in favor of the stay" when: (1) there is a prior pending action in another jurisdiction; (2) that involves the same parties and issues; and (3) the other jurisdiction's courts are

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[7] *Transamerica Corp. v. Reliance Ins. Co. of Ill.*, 1995 WL 1312656, at *3 (Del. Super.) (citing *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970)).
[8] *McWane*, 263 A.2d at 283.
[9] *Palmer v. Palmer*, 409 A.2d 1050, 1051 (Del. 1979); *see also Transamerica*, 1995 WL 1312656, at *6.

capable of delivering prompt and complete justice.[10] The Court balances these factors and all other pertinent facts and circumstances against the possibility of inconsistent and conflicting rulings if both actions are permitted to proceed at the same time.[11]

"Delaware courts . . . have recognized that all claims arising from a common nucleus of operative facts should be brought in the same court at the same time."[12] The parties and facts need not be identical, and, in a typical *McWane* analysis, they rarely are.[13] As a result, the Court must "balance the lack of complete identity of parties [and issues] against the possibility of conflicting rulings which could come forth if both actions were allowed to proceed simultaneously."[14] A "substantial or functional identity"

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[10] *McWane*, 263 A.2d at 283.

[11] *Transamerica*, 1995 WL 1312656, at *6 (citing *McWane*, 263 A.2d at 283 ("[T]o be avoided is the possibility of inconsistent and conflicting rulings and judgments and an unseemly race by each party to trial and judgment in the forum of its choice. Public regard for busy courts is not increased by the unbusinesslike and inefficient administration of justice such situation produces.")).

[12] *Transamerica*, 1995 WL 1312656, at *5 (citing *Schnell v. Porta Sys. Corp.*, 1994 WL 148276, at *4 (Del. Ch.) (determining whether the claims arose "out of the same transactional facts")); *see also Lisa, S.A. v. Mayorga*, 993 A.2d 1042, 1048 (Del. 2010).

[13] *See, e.g., Transamerica,* 1995 WL 1312656, at *5 ("Although there may not be an absolute identity of parties and issues in both actions, lack of absolute identity of parties and issues is not a prerequisite to granting a motion to stay."); *Baks v. CenTra, Inc.*, C.A. No. 94C-01-129, Silverman, J. (Del. Super. Aug. 24, 1994) (staying the after-filed Delaware action where additional parties and claims were present); *Life Assurance Co. of Pa. v. Assoc. Inv. Int'l Corp.*, 312 A.2d 337, 341 (Del. Ch. 1973) (staying the after-filed Delaware action where the first-filed action did not include all parties and claims present in the Delaware action).

[14] *Choice Hotels Intern., Inc. v. Columbus Hunt DR. BNK Investors, L.L.C.*, 2009 WL 3335332, at *7 (Del. Ch.) (quoting *Playtex, Inc. v. Columbia Cas. Co.*, 1989 WL 40913, at *3 (Del. Super.)).

is sufficient.[15] Delaware courts also have held parties to be substantially similar where differences can be remedied by joinder.[16]

Applying the Standard

Before addressing the elements of the *McWane* Doctrine, the Court must settle the parties' dispute as to how the standard is applied. MSA argues that its choice of forum warrants deference, citing *Monsanto Co. v. Aetna Cas. & Surplus Co.*[17] To overcome that deference, MSA contends, North River must show that it would suffer "overwhelming hardship" by litigating in Delaware, citing *Lisa, S.A. v. Mayorga*.[18] North River responds that, when addressing an after-filed claim in Delaware, the Court must exercise its discretion in favor of staying or dismissing the action.

The Delaware Supreme Court recently clarified the application of the *McWane* Doctrine in *Lisa*. The Court explained that the overwhelming hardship standard does not apply to Delaware actions that were not first-filed.[19] "Where the Delaware action is the first-filed, the plaintiff's choice of forum will be respected and rarely disturbed, even if there is a more

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[15] *Id*. (citing *Davis Int'l, LLC v. New Start Gp. Corp.*, 2005 WL 2899683, at *2 (Del. Ch.)).
[16] *W.C. McQuaide, Inc. v. McQuaide*, 2005 WL 1288523, at *4 (Del. Ch.) (citing *Corwin v. Silverman*, 1999 WL 499456, at *4 & n.13 (Del. Ch.)).
[17] 559 A.2d 1301 (Del. Super. 1988).
[18] 993 A.2d 1042 (Del. 2010).
[19] *Id*. at 1047.

convenient forum to litigate the claim."[20] Further, the Court noted that every time it has applied the overwhelming hardship standard, the Delaware action was first-filed or the only pending action.[21] The overwhelming hardship standard applies in a traditional *forum non conveniens* analysis.

MSA's reliance on *Monsanto* is misplaced. In *Monsanto*, the Court engaged in a traditional *forum non conveniens* analysis and applied the overwhelming hardship standard.[22] Accordingly, the Court gave deference to the plaintiff's choice of forum in the first-filed Delaware Action.[23] The Court did not apply the *McWane* Doctrine.

The *McWane* Doctrine requires that the Court give strong deference to a plaintiff's *initial* choice of forum, and freely exercise discretion in favor of staying or dismissing the Delaware action.[24] In this case, the Delaware Action was after-filed. Therefore the Court will evaluate the motion to dismiss or stay in that context.

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[20] *Id*.
[21] *Id*. (*see id*. at n.13).
[22] *Monsanto*, 559 A.2d at 1304-05.
[23] *Id*.
[24] *Id.* (emphasis added).

Prior Pending Actions in other Jurisdictions

It is undisputed that the Pending Actions were filed before the Delaware Action in the United States District Court for the Western District of Pennsylvania and in the Pennsylvania Court of Common Pleas.

The Same Parties

North River argues that the additional defendants named by MSA in the Delaware Action were included as a "sham" for MSA to forum shop. North River relies upon the fact that MSA's first-layer excess policies have not been exhausted. Therefore, North River asserts, the only immediate, existing dispute is between MSA and its first-layer excess insurers, not its second-layer excess insurers. Accordingly, North River argues, the essential parties are the same.

MSA responds that Delaware courts prefer to hear comprehensive disputes over insurance policy interpretation, and therefore, the fact that MSA's secondary excess insurance policies have not been triggered is immaterial. MSA relies on the fact that it named 31 defendants in the Delaware Action, and only three of those parties are involved in the Pending Actions. Therefore, MSA argues, the parties are not substantially similar.

In the Delaware Action, MSA filed suit against 31 defendants, 3 of which are involved in the Pending Actions. In the Pending Actions, the

dispute is among MSA and its first-layer excess insurers. In the Delaware Action, the dispute is among MSA and its first-layer and second-layer excess insurers. Without joinder, MSA contends that this significant lack of identity must result in a finding that the parties are not substantially similar. Because MSA seeks declaratory relief, the Court will consider *Vale Chemical Co. v. Hartford Accident & Indem. Co.*[25] to determine whether the parties can be joined.

In *Vale*, the plaintiff filed an action for declaratory judgment against the defendants, several insurance companies, seeking a declaration that the defendants were required to defend a tort action filed against the plaintiff, and indemnify plaintiff for any resulting liability.[26] Plaintiff had been sued by an individual who claimed that plaintiff's products caused her cancer.[27] The Pennsylvania Court of Common Pleas held that the defendants were required to defend and indemnify plaintiff.[28] The Pennsylvania Superior Court affirmed, holding that all insurers that provided plaintiff with liability coverage during the period of time that the individual was exposed to the

[25] 516 A.2d 684 (Pa. 1986).
[26] *Id*. at 685.
[27] *Id*.
[28] *Id*. at 685-86.

plaintiff's products, including the defendants, were responsible for providing a defense.[29]

The Pennsylvania Supreme Court vacated the Superior Court's order and remanded to Common Pleas with directions to dismiss the suit for lack of subject matter jurisdiction.[30] The Supreme Court relied on 42 Pa.C.S. § 7540(a), which provides: "General Rule.-When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of the persons not parties to the proceeding." The Supreme Court explained that it "has consistently held that where claims are asserted against an insured, the persons asserting the claims are indispensable parties in a declaratory judgment action on the issue of coverage between the insured and the insurance carrier."[31] As a result, the plaintiff's action was dismissed for failure to join indispensable parties.[32]

Applying *Vale*, the dissimilarity of parties cannot be remedied by joining the additional defendants in the Second Pennsylvania Action. As a matter of practicality, MSA cannot join the thousands of underlying tort

[29] *Id*. at 686.
[30] *Id*.
[31] *Id*.
[32] *Id*. at 688.

victims that may collect insurance proceeds from the defendants that MSA wishes to join.

However, the Court finds the dissimilarity of parties can be remedied by joining the additional defendants in the Federal Action, which *Vale* does not control. In the Federal Action, MSA alleges breach of contract against North River. North River counterclaimed for declaratory judgment. MSA, like North River, may pursue declaratory relief in the United States District Court for the Western District of Pennsylvania. This Court acknowledges MSA's argument that it may not be able to join all of the additional defendants because it cannot establish federal jurisdiction for every defendant. However, MSA can establish federal jurisdiction for several of the defendants, and join them in the Federal Action. As a result, the Court finds that the parties are substantially similar because their dissimilarity can be remedied by a joinder. Complete identity of parties is not a prerequisite to a stay.[33]

The Same Claims

North River argues that the Pending Actions and the Delaware Action arise from a common nucleus of operative facts and involve the same issue: the Underlying Claims and MSA's insurance coverage for the liability and

[33] *Transamerica*, 1995 WL 1312656, at *5.

costs from the Underlying Claims. MSA responds that only 7 MSA insurance policies are at issue in the Pending Actions, and 125 insurance policies are at issue in the Delaware Action. MSA asserts that the additional 118 insurance policies raise several issues not germane to the Pending Actions.

The Court finds the claims in the Pending Actions and the Delaware Action to be substantially similar. The "common nucleus of operative facts" is the Underlying Claims and concomitant insurance coverage. The fact that MSA, by filing the Delaware Action, put an additional 118 insurance policies at issue does not change the substance of the underlying issues. MSA has failed to demonstrate that the contested contract language is so disparate, among the excess carriers, as to render a decision on some contracts irrelevant or non-binding as to the contracts with defendants who are not presently joined in the Pending Actions.

Additionally, it is worth noting that the form of the claims — whether breach of contract or declaratory relief — is of no consequence in determining the factual origin of the claims or interpretation of the contractual provisions.[34]

[34] *See, e.g., Davis Ins. Group v. Ins. Assoc., Inc.*, 1998 WL 892623 (Del. Ch.).

The Pennsylvania Court of Common Pleas and the United States District Court for the Western District of Pennsylvania's Ability to Render Prompt and Complete Justice

The Court finds that the United States District Court for the Western District of Pennsylvania is capable of rendering prompt and complete justice. MSA, like North River, may pursue declaratory relief in that Court, where *Vale* does not apply.[35] The District Court is able to resolve MSA's claims. MSA may join almost all other Delaware Action defendants to the Federal Action.[36] Even in the absence of potential insurance carrier parties whose voluntary intervention might affect federal jurisdiction, MSA has not convinced the Court that prompt and complete justice cannot be achieved outside Delaware.

Determining the rights and obligations of parties to a contract is an exercise germane not only to a declaratory judgment action, but in a breach of contract action. The issues presented in the declaratory judgment counterclaim in the Federal Action are essentially the same as those presented in the Delaware Action. The tribunal first must find that coverage is available before it can address breach of contract.

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[35] Putting aside the holding in *Vale*, the Court finds that the Pennsylvania Court of Common Pleas theoretically would be capable of rending prompt and complete justice to MSA's claims against its first-layer excess insurers.

[36] It is possible that all defendants may be permitted to intervene in the Federal Action without destroying diversity jurisdiction. *See, e.g., Mattel, Inc. v. Bryant*, 441 F. Supp. 2d 1081, 1093-98 (C.D. Cal. 2005).

Balancing the* McWane *Factors, and Principles of Comity, against the Possibility of Inconsistent and Conflicting Rulings if Both Actions are Permitted to Proceed at the Same Time

The principles of comity support a stay of the Delaware Action. The Pending Actions and the Delaware Action involve MSA, a Pennsylvania company, and various insurance entities that are based in and operate in Pennsylvania. Documents and corporate witnesses are located in Pennsylvania. Additionally, the parties agree that the insurance policies are governed by Pennsylvania law.

Multiple actions inevitably result in duplication of effort and expense. The possibility of inconsistent and conflicting rulings is clear. The excess insurers are involved in the Pending Actions and the Delaware Action. Therefore, in the Delaware Action, a declaration that clarifies the rights and obligations of MSA and its excess insurers has the potential to conflict with a declaratory judgment or breach of contract finding in the Pending Actions.

All *McWane* factors favor a stay of the Delaware Action. Balancing the similarity of the parties, the similarity of the claims, the ability of the United States District Court for the Western District of Pennsylvania to render justice, and principles of comity — against the patent risk of inconsistent and conflicting rulings — the Court finds that the Delaware Action should be stayed pending resolution of the Pending Actions.

B. North River's Motion Motion to Dismiss Pursuant to *Res Judicata*

Parties' Contentions

North River argues that, in the New Jersey Action, the New Jersey Superior Court determined that the litigation deriving from the Underlying Claims should take place in Pennsylvania. Therefore, North River contends, MSA is precluded from asserting that Delaware is an appropriate forum.

MSA responds that it maintains the ability to litigate in Delaware because the dismissal of the New Jersey Action was not on the merits of the substantive claims.

Analysis

Res judicata, or claim preclusion, operates to bar a claim where the following five-part test is satisfied:

> (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and (5) the decree in the prior action was a final decree.[37]

The Court finds that MSA's claims are not precluded by *res judicata*. At the least, North River has not satisfied the fifth element. The decision in the New Jersey Action was not a "final decree," or, in other words, a final

[37] *Dover Historical Soc., Inc., v. City of Dover Planning Comm'n*, 902 A.2d 1084, 1089 (Del. 2006) (citing *Bailey v. City of Wilm.*, 766 A.2d 477, 481 (Del. 2001)).

decision on the merits.[38] Rather, the New Jersey Superior Court made a jurisdictional determination.

CONCLUSION

The Court finds that: the parties and issues in the Delaware Action and the Pending 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 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 Actions, weigh in favor of a stay. *Res judicata* does not bar the Delaware Action because the New Jersey Superior Court did not dismiss the New Jersey Action on its merits.

THEREFORE, North River's Motion to Stay the Delaware Action pending resolution of the Pending Actions is hereby **GRANTED**, and North River's Motion to Dismiss the Delaware Action based on *res judicata* is hereby **DENIED**.

Some defendants also move for a more definite statement pursuant to Superior Court Civil Rule 12(e) regarding MSA's Amended Complaint.

[38] *See Trinity Inv. Trust v. Morgan Guar. Trust Co. of N.Y.*, 2001 WL 1221080, at *2 (Del. Super.) (holding that a "decision to dismiss the . . . action based on *forum non conveniens* was a jurisdictional decision," not a final decision on the merits).

Because the Court concludes that the Delaware Action should be stayed pending resolution of the Pending Actions, the Court need not resolve the issue at this juncture.

The parties shall provide the Court with written status reports at six-month intervals.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston