

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

AMERICAN FAMILY MUTUAL	)	
INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:16CV315 CDP
	)	
CHRIS DECK, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER TO SHOW CAUSE**

Plaintiff American Family Mutual Insurance Company brings this declaratory judgment action requesting that I determine “whether or not” a certain policy of insurance provides coverage for a loss caused by fire and, further, declare its rights and obligations under the policy as it relates to the defendants in this action. The Clerk of Court has entered default against defendants Chris and Nichole Deck, as well as against defendant Decks Auto & Transmission, Inc., given their failure to timely answer or otherwise respond to the complaint. American Family has filed a motion for judgment on the pleadings or, in the alternative, default judgment against these defendants. Defendants Daniel J. and Barbara J. Evans have answered the complaint.

As discussed with counsel at the scheduling conference, there appears to be no justiciable case or controversy in this action. American Family does not allege

in its complaint that coverage does not exist for the insurance claim, nor does it allege that it denied any claim made under the policy. Indeed, it does not even allege any conduct by the defendants that would render the policy inapplicable to the claimed loss. Instead, it simply asks me to determine “whether or not” there is coverage under the policy. To me, this appears to be a request that I give an advisory opinion on an abstract, hypothetical, or contingent question – a power that I do not have, even in a declaratory judgment action. *Alabama State Fed’n of Labor, Local Union No. 103, United Bhd. of Carpenters & Joiners of Am. v. McAdory*, 325 U.S. 450, 461 (1945). Although plaintiff’s counsel referred me to *Johnson v. Allstate Indem. Co.*, 278 S.W.3d 228 (Mo. Ct. App. 2009), as its source for the manner by which it is pursuing this action, my review of that case does not show it to permit, encourage, or even suggest that advisory opinions be sought by way of declaratory judgment actions in circumstances akin to those of this case.


Rather than dismiss the case at this time, I will give the parties the opportunity to brief the issue of whether this case presents a justiciable case or controversy to bring it within this Court’s jurisdiction under Article III of the United States Constitution.

Accordingly,

**IT IS HEREBY ORDERED** that not later than **Friday, June 17, 2016**, the parties shall *each* file a brief addressing whether this declaratory judgment action

presents a justiciable case or controversy as contemplated under Article III of the United States Constitution. In its brief, plaintiff American Family must show cause why this case should not be dismissed without prejudice for lack of a justiciable controversy.

No additional briefing will be permitted.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 8th day of June, 2016.