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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TROY AND PAULA BURLEY AND PAUL	)	3:15-cv-00272-HDM-WGC
ACKERMAN AND JUDY ACKERMAN AS	)	
TRUSTEES OF THE ACKERMAN FAMILY	)	
TRUST, et al.,	)	ORDER
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
NATIONAL UNION FIRE INSURANCE	)	
COMPANY OF PITTSBURGH PA, a	)	
subsidiary of AMERICAN	)	
INTERNATIONAL GROUP, INC., and	)	
DOES 1 through 100, inclusive,	)	
	)	
Defendants.	)	
	)	

19 Before the court is plaintiffs' motion to remand to state court  
20 (#7). Defendant National Union filed a response (#12) and plaintiffs  
21 replied (#14). Defendant filed objections to plaintiffs' reply (#15)  
22 and requested leave to file a sur-reply (#17). The court granted that  
23 motion (#19) and defendant filed a sur-reply (#20).

24 Plaintiffs are citizens of Nevada and are plaintiffs in an  
25 underlying state construction defect lawsuit concerning their Nevada  
26 residences. Plaintiffs allege that they obtained a verdict against  
27 subcontractor Padilla Construction Company of Nevada ("Padilla") in  
28 state court and were awarded a \$588,888.32 judgment. Defendant,

1 Padilla's insurer, is a Pennsylvania corporation with its principal  
2 place of business in New York. Plaintiffs allege that defendant has  
3 refused or otherwise failed to pay the state court judgment. In their  
4 Second Amended Complaint filed in state court, Plaintiffs allege four  
5 causes of action: 1) declaratory relief; 2) satisfaction and  
6 enforcement of judgment; 3) breach of duty of good faith and fair  
7 dealing; and 4) breach of Nevada insurance laws/statutory bad faith.  
8 Defendant removed the action to this court on the basis of complete  
9 diversity of the parties.

10 Pursuant to 28 U.S.C. § 1447(c), once a case is removed to  
11 federal court, a motion to remand may be filed on the basis of any  
12 defect other than lack of subject matter jurisdiction and must be made  
13 within 30 days after the filing of the notice of removal under section  
14 1446(a). Defendant filed its notice of removal on May 21, 2015 (#1).  
15 Plaintiffs timely filed their motion to remand on June 8, 2015 (#7).

16 In their motion, Plaintiffs assert that because this case is an  
17 insurance declaratory relief action inextricably related to the state  
18 court case, the court has discretion to decline jurisdiction and  
19 remand this action pursuant to the doctrine of abstention. Defendant  
20 contends that the discretionary jurisdictional rule is inapplicable  
21 because the declaratory relief claim is mixed with other, independent  
22 causes of action. Additionally, defendant contends that even if the  
23 doctrine of abstention were to apply in this case, remand would be  
24 improper.

25 **Standards**

26 Under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), district  
27 courts have discretion to decline jurisdiction over actions seeking  
28 declaratory relief in federal court. The exercise of jurisdiction

1 under the Declaratory Judgment Act "is committed to the sound  
2 discretion of federal district courts." *Huth v. Hartford, Ins. Co.*  
3 *of the Midwest*, 298 F.3d 800, 802 (9th Cir. 2002). In assessing  
4 actions for declaratory judgment, "the normal principle that federal  
5 courts should adjudicate claims within their jurisdiction yields to  
6 considerations of practicality and wise judicial administration."  
7 *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995). Whether the  
8 court should exercise its discretion to decline jurisdiction over a  
9 declaratory judgment action is guided by the factors set forth in  
10 *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 494-95 (1942).  
11 See *Huth*, 298 F.3d at 803. *Brillhart* requires the court to consider  
12 whether declining jurisdiction will (1) avoid needless determination  
13 of state law issues; (2) discourage litigants from filing declaratory  
14 actions as a means of forum shopping; and (3) avoid duplicative  
15 litigation. *Id.* at 803.

16 However, the *Brillhart* factors do not apply when other claims  
17 (e.g., bad faith, breach of contract, breach of fiduciary duty,  
18 rescission, or other monetary relief) are joined with an action for  
19 declaratory relief. *Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220,  
20 1225-26 & n. 6 (9th Cir. 1998). "Claims that exist independent of the  
21 request for a declaration are not subject to the Declaratory Judgment  
22 Act's discretionary jurisdiction rule." *Snodgrass v. Provident Life*  
23 *& Accident Ins. CO.*, 147 F.3d 1163, 1167 (9th Cir. 1998) (citing  
24 *Maryland Cas. Co. v. Knight*, 96, F.3d 1284, 1289 & n. 6 (9th Cir.  
25 1996)). Rather, such claims invoke the "virtually unflagging"  
26 obligation to exercise jurisdiction. *First State Ins. Co. v. Callan*  
27 *Assocs. Inc.*, 113 F.3d 161, 163 (9th Cir. 1997) (quoting *Colorado*  
28 *River Water Conservation Dist. v. United States*, 424 U.S. 800, 817

1 (1995)). See also *Dizol*, 133 F.3d at 1225-26 & n. 6 (stating that, as  
2 a general rule, the court should not remand when other claims are  
3 joined with an action for declaratory relief).

4 In *Snodgrass*, the Ninth Circuit provided the following guidance  
5 for courts seeking to determine whether jurisdiction over actions with  
6 both declaratory and monetary claims remained discretionary or became  
7 mandatory:

8 The appropriate inquiry for a district court in a  
9 Declaratory Judgment Act case is to determine whether  
10 there are claims in the case that exist independent of  
11 any request for purely declaratory relief, that is,  
12 claims that would continue to exist if the request for a  
13 declaration simply dropped from the case.

14 *Snodgrass*, 147 F.3d at 1167-68. The Ninth Circuit later refined the  
15 relevant question to be "whether the claim for monetary relief is  
16 independent in the sense that it could be litigated in federal court  
17 even if no declaratory claim had been filed." *United Nat'l Ins. Co.*  
18 *v. R&D Latex Corp.*, 242 F.3d 1102, 1113 (9th Cir. 2001). "In other  
19 words, the district court should consider whether it has subject  
20 matter jurisdiction over the monetary claim alone, and if so, whether  
21 the claim must be joined with one for declaratory relief." *Id.* at  
22 1113.

## 21 **Analysis**

22 Plaintiffs' complaint asserts claims for both declaratory relief  
23 and monetary damages. Applying the preceding principles, the motion  
24 to remand fails. As an initial matter, defendant had a proper basis  
25 for removal. The parties' citizenship is diverse for the purposes of  
26 28 U.S.C. § 1332—plaintiffs are citizens of Nevada and defendant is  
27 a Pennsylvania corporation with its principal place of business in New  
28 York—and the amount in controversy exceeds \$75,000. See #1.

1 Plaintiffs do not dispute that defendant properly removed this case  
2 pursuant to the court's diversity jurisdiction.

3 Plaintiffs' suit seeks damages, both actual and punitive, from  
4 defendant for allegedly breaching the duty of good faith and fair  
5 dealing and violating Nevada's Unfair Claims Practices Act. These  
6 claims for damages are independent of the claims for declaratory  
7 relief. While the claims may be related to the declaratory relief,  
8 they are not dependent on the declaratory relief claims as they could  
9 have been brought separately pursuant to the court's diversity  
10 jurisdiction. *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1367  
11 (9th Cir. 1991) (noting that the district court had to retain  
12 jurisdiction over a bad faith suit filed with a declaratory relief  
13 claim). As such, the claims "could be litigated in federal court even  
14 if no declaratory claim had been filed."<sup>1</sup> *R&D Latex Corp.*, 242 F.3d  
15 at 1113.

16 The court finds plaintiffs' attempts to distinguish *Snodgrass* and  
17 the surrounding case law unavailing. Plaintiffs represent that "only  
18 in a situation in which there was not a valid judgment against the  
19 insured in a related case did the *Snodgrass* Court determin(e) that the  
20 monetary claims were independent coercive claims." #14 at 10.  
21 Plaintiffs argue that the court may decline jurisdiction because their  
22 claims for breach of the duty of good faith and fair dealing and  
23 violations of Nevada's Unfair Claims Practices Act are wholly  
24 dependent on their claims for declaratory relief. *Id.* at 11.  
25 Plaintiffs also assert that they did "not intend to bring independent  
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27 <sup>1</sup> The parties have not presented evidence that would establish that the jurisdictional threshold  
28 has been met in this action if the monetary claims were brought without the requested declaratory relief  
claim. Nonetheless, the requested compensatory and punitive damages appear to meet the amount-in-  
controversy requirement. *See* #1 at ¶¶ 3.5, 3.6, 4.5, 4.6, 4.7.

1 monetary claims . . . that are not dependent upon the declaratory  
2 relief action." *Id.* at 11.

3 Under Nevada Unfair Claims Practices Act, NRS 686A.310, however,  
4 an insurer is liable for engaging in certain unfair practices.  
5 Plaintiffs seek damages against defendant for violations of NRS  
6 686A.310 because defendant allegedly (1) misrepresented to insureds  
7 or claimants pertinent facts or insurance policy provisions relating  
8 to any coverage at issue, (2) failed to acknowledge and act promptly  
9 upon communications with respect to claims arising under insurance  
10 policies, (3) failed to adopt and implement reasonable standards for  
11 the prompt investigation and processing of claims arising under  
12 insurance policies, (4) failed to affirm or deny coverage of claims  
13 within a reasonable time after proof of loss requirements have been  
14 completed and submitted by the insured, (5) failed to effectuate  
15 prompt, fair and equitable settlement of claims in which liability of  
16 the insurer has become reasonably clear, and (6) failed to reference  
17 in the original denial letter the specific policy provision, condition  
18 or exclusion for the ultimate denial. #1 at 16. Thus, although the  
19 question regarding coverage may be relevant, the bad faith claims seek  
20 damages regardless of whether coverage is owed. Accordingly, because  
21 the monetary claims "exist independent of the request for a  
22 declaration," the motion to remand (#7) should be and is hereby  
23 **DENIED.** *Snodgrass*, 147 F.3d at 1167-68.

24 IT IS SO ORDERED.

25 DATED: This 6th day of October, 2015.

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UNITED STATES DISTRICT JUDGE