

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

FOUNDERS INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	Case No. 14-CV-604-JED-TLW
v.)	
)	
JR SPANKY’S, LLC,)	
)	
Defendant.)	

OPINION AND ORDER

Plaintiff initiated this declaratory judgment action for a determination of the rights and obligations of the parties under an insurance policy. Based upon the allegations of the Complaint, the Court has subject matter jurisdiction based upon diversity. The following facts are alleged in the Complaint and are taken as true in deciding defendant’s dismissal motion.

On June 6, 2014, a petition was filed in Ottawa County District Court on behalf of Victoria and Reilly McLaughlin, Makailey Mitchell, and Ethan Rodgers (Underlying Plaintiffs).¹ In their Petition there, Ottawa County Case No. CJ-2014-65 (Underlying Lawsuit), the Underlying Plaintiffs sought damages for injuries arising from an automobile accident on September 18, 2012. Among other defendants to the Underlying Lawsuit, the defendant in this federal case – JR Spanky’s – was sued by the Underlying Plaintiffs, based upon allegations that JR Spanky’s served alcoholic beverages to Kalom Tracy although JR Spanky’s “knew or should have known” that Tracy was intoxicated. The Underlying Lawsuit alleged negligence and negligence per se claims against JR Spanky’s and sought actual and punitive damages.

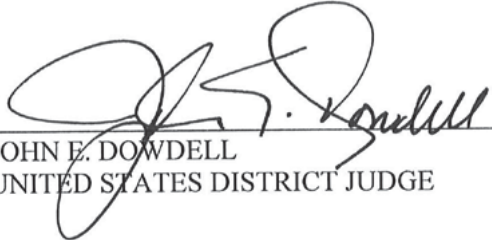
¹ Victoria McLaughlin brought the suit on behalf of Mitchell and Rodgers, who were minors.

Founders Insurance Company, who is the plaintiff in the instant action, issued an Oklahoma Liquor Liability Policy to JR Spanky's. The policy had effective dates of August 15, 2012 through August 15, 2013. Founders alleges that there is an actual and justiciable controversy between Founders and JR Spanky's regarding whether the policy covered the damages claimed in the Underlying Lawsuit.

JR Spanky's seeks dismissal, principally based upon an argument that a determination of the matters herein would impact the Underlying Lawsuit, and the Court should thus abstain from determining these matters. However, Founders is not a named party to the Underlying Lawsuit, which involves negligence issues, such as whether there was a duty, a breach of duty, and damages caused by any breach, whereas this federal action alleges a justiciable controversy regarding insurance coverage between Founders and its insured. While the cases are in a general sense related, the outcome of one is not dependent upon the other. Moreover, the Court takes judicial notice that the publically-available docket for the Underlying Lawsuit indicates that it was recently dismissed with prejudice, a further indication that the issues there did not depend upon the issues here, or vice versa.

IT IS THEREFORE ORDERED that the dismissal motion (Doc. 11), and defendant's alternative request for a stay (Doc. 12) are hereby **denied**. The parties shall file a Joint Status Report on or before **April 29, 2016**.

SO ORDERED this 31st day of March, 2016.


JOHN E. DOWDELL
UNITED STATES DISTRICT JUDGE