

2010 WL 11598017

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United States District Court, S.D. New York.

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,** Plaintiff,

v.

**COMPACTION SYSTEMS CORPORATION
OF NEW JERSEY and Compaction Systems
Corporation of Connecticut,** Defendants.

09 Cv. 6216 (BSJ)

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Signed 07/31/2010

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Attorneys and Law Firms

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Order

BARBARA S. JONES, UNITED STATES DISTRICT JUDGE

***1** On July 10, 2009, Defendants Compaction Systems Corporation of New Jersey and Compaction Systems Corporation of Connecticut (collectively “Compaction” or “Defendants”) removed this action from the Supreme Court, County of New York, to this Court. On October 8, 2009, Plaintiff National Union Fire Insurance Company of Pittsburgh, PA (“National Union” or “Plaintiff”) filed a Motion to Remand this action to New York state court. For the reasons stated below, Plaintiff’s Motion to Remand is GRANTED.

Background

In 1998, Plaintiff and Defendant entered into a settlement agreement (the “Settlement Agreement”) to resolve certain liabilities associated with environmental contamination at the Combe Fill North Landfill site in Mount Olive, New Jersey and the Combe Fill South Landfill site in Chester, New Jersey. (See Complaint ¶ 1.) The Settlement Agreement resolved a declaratory judgment action between the parties in New Jersey state court. (*Id.*) In exchange for payment by National Union, Compaction expressly released National Union for all claims for insurance coverage for the sites under policies issued by National Union to Combustion Equipment Associates, Inc. and under a policy issued by National Union to Carter Day Industries, Inc. (the “Carter Day Parties”). (*Id.*)

That same year, the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection filed suit against various parties, including Defendants, for costs relating to the clean-up of the Combe Fill South Site. (Complaint ¶ 15.) These actions were consolidated into a single action before the United States District Court for the District of New Jersey. (*Id.*) In 2000, various defendants, including Compaction, filed a third-party complaint for contribution and cost recovery against the Carter Day Parties. (Complaint ¶ 16.) Compaction’s third-party action resulted in a Partial Consent Decree, signed by Hon. William H. Walls of the United States District Court of New Jersey on June 15, 2009. (Def.’s Opp’n at 2.) The Partial Consent Decree states that the United States District Court of the District of New Jersey retains jurisdiction over “the Compaction Contribution Action and the Defaulting Party Action, and all related proceedings” pursuant to 28 U.S.C. § 1367(a). (Pollock Decl., Ex. A, ¶ 23(d).) National Union was not a party to Compaction’s third-party action or to the Partial Consent Decree. (See Pollock Decl., Ex. A.)

On June 2, 2009, Plaintiff commenced this action by filing a complaint against Compaction in the Supreme Court of New York, County of New York (the “Complaint”). The Complaint contains causes of action for declaratory judgment, indemnification, and breach of contract with respect to the Settlement Agreement. (See Complaint ¶ 1-2.) In the alternative, National Union seeks a declaration of the scope of coverage under the National Union insurance policies issued to Combustion Equipment Associates and Carter Day Industries (the “National Union Policies”). (*Id.* at ¶ 64.)

***2** On July 10, 2009, Compaction filed a Notice of Removal, removing the action to this Court under 28 U.S.C. § 1441(b). Compaction claims that this Court has original jurisdiction

over the claims under 28 U.S.C. § 1331, the federal question statute, and under 28 U.S.C. § 1367(a), the supplemental jurisdiction statute. (See Notice of Removal at ¶¶ 3-6.)

Analysis

Plaintiffs contend that because the claims in the Complaint rely exclusively on state law, this Court does not have original jurisdiction under 28 U.S.C. § 1331. Furthermore, because this Court does not have original jurisdiction over any of the claims, this Court may not exercise supplemental jurisdiction under 28 U.S.C. § 1367(a). (Pl.'s Br. At 2-3.) The Court agrees.

Defendants argue that this action should be transferred to the United States District Court for the District of New Jersey pursuant to 28 U.S.C. § 1404(a). (Def.'s Opp'n at 5.) According to Defendants, the claims in the Complaint are related to Compaction's cost recovery and contribution action against the Carter Day Parties. Therefore, because the District Court of New Jersey retained jurisdiction over related proceedings in the Partial Consent Decree, this Court should transfer the instant action to the United States District Court of New Jersey for further proceedings. (See *Id.*)

As an initial matter, this Court must have subject matter jurisdiction over the action before it may transfer the case to another federal district court. In this regard, the Court finds the Supreme Court's decision in [Syngenta Crop Protection v. Henson](#), 537 U.S. 28, 123 S.Ct. 366, 154 L.Ed.2d 368 (2002), instructive. In [Syngenta](#), a Louisiana state court action was removed to federal district court in Louisiana. The action was then transferred to federal district court in Alabama, which had retained jurisdiction over a settlement agreement in a related action. The federal district court in Alabama later dismissed the action. [Syngenta](#), 537 U.S. at 30, 123 S.Ct. 366. The Supreme Court affirmed an Eleventh Circuit decision overturning the dismissal on the grounds that the federal district court in Louisiana did not have original jurisdiction over the action. Thus, the action should have been remanded to Louisiana state court rather than transferred to federal district court in Alabama. *Id.* at 33, 123 S.Ct. 366. The Supreme Court also ruled that ancillary enforcement jurisdiction did not support removal simply because the federal district court in Alabama had retained jurisdiction over a related settlement agreement. *Id.* at 33-34, 123 S.Ct. 366. Therefore, in this case, despite the fact that the United States District Court for the District of New Jersey handled

a related action and retained jurisdiction over the ensuing Partial Consent Decree, this Court must first have original jurisdiction over this action before it may be transferred to another federal district court.

In order to establish original jurisdiction, a substantial federal question must be presented on the face of a plaintiff's "well-pleaded complaint." [Merrell Dow Pharmaceuticals, Inc. v. Thompson](#), 478 U.S. 804, 808, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). The federal issue "must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." [Gully v. First National Bank](#), 299 U.S. 109, 113, 57 S.Ct. 96, 81 L.Ed. 70 (1936). As Plaintiff asserts only state law causes of action, Plaintiff's claims arise exclusively out of state law and provide no basis for federal original jurisdiction. See [Bay Shore Union Free School District v. Kain](#), 485 F.3d 730, 735 (2d Cir. 2007) ("A suit arises under the law that creates the cause of action") (quoting [American Well Works Co. v. Layne & Bowler Co.](#), 241 U.S. 257, 260, 36 S.Ct. 585, 60 L.Ed. 987 (1916)).

*3 Defendants contend that, while the Complaint does not assert a federal cause of action, there is a substantial question of federal law in this action because Compaction's related contribution and cost recovery action in New Jersey, and the resulting Partial Consent Decree, arose under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). (See Notice of Removal at ¶ 3.) However, "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." [Merrell Dow](#), 478 U.S. at 813, 106 S.Ct. 3229; see also [West 14th Street Commercial Corp. v. 5 West 14th Street Corp.](#), 815 F.2d 188, 192 (2d. Cir. 1987); [Eugene Iovine, Inc. v. United States District Court for the Southern District of New York](#), 1998 U.S. Dist. LEXIS 20420 (S.D.N.Y. 1998); [Donovan v. Rothman](#), 106 F.Supp.2d 513 (S.D.N.Y. 2000). Plaintiff's action concerns insurance coverage and seeks relief pursuant to the Settlement Agreement, which resolved a declaratory judgment action in New Jersey state court. (Complaint ¶ 1.) Generally, actions for breach of a settlement agreement are a matter of state law. See [Kokkonen v. Guardian Life Ins. Co. of Am.](#), 511 U.S. 375, 381-82, 114 S.Ct. 1673, 128 L.Ed.2d 391 (U.S. 1994). Courts have also made clear that insurance coverage disputes, including those involving claims for coverage associated with CERCLA-created liabilities, are a matter of state law governing the interpretation of contracts. [American Policyholders Ins. Co. v. Nyacol Products, Inc.](#), 989 F.2d 1256 (1st Cir. 1993) (holding that removal to

federal court was improper because the underlying cause of action, interpretation of an insurance contract, is based solely upon state law); [Hudson Ins. Co. v. American Electric Corp.](#), 957 F.2d 826 (11th Cir. 1992) (affirming district court's conclusion that the court lacked original jurisdiction over insurer's action for declaratory judgment that its policy did not provide coverage for CERCLA liability). As Plaintiff's claims arise exclusively out of state law and do not raise substantial questions of federal law, this Court lacks original jurisdiction over the action.

Conclusion

For the reasons stated above, Plaintiff's Motion to Remand this action to state court is GRANTED. The Clerk of the Court is directed to close the case.

SO ORDERED.

All Citations

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