UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff,

v. Case No. 8:21-cv-2959-SCB-AEP

QUALITY T-TOPS & BOAT ACCESSORIES, INC.,
ANGELA MARIE MEISMAN, as the Personal Representative of the Estate of Travis Meisman,
AMBER MICHELLE MOONEY, as the Personal Representative of the Estate of Donna L. Rein and Her Survivors,
SEAN P. DONAHUE,
CHRISTOPHER C. FRENCH,
COLIN J. KEELER,
AUSTIN LEWIS,
CONSTANCE LEWIS,[1] and
VAUGHN W. MONGAN,

Defendants.
_____/

O R D E R

Before the Court are the following motions and pleadings:

(1) Defendants Christopher C. French's and Sean P. Donahue's Joint Motion to Dismiss, or Alternatively, Joint Motion to Abstain (Doc. 7);[2]

[1] Defendants Austin Lewis and Constance Lewis have not been served.

[2] Defendants Quality T-Tops & Boat Accessories, Inc.; Angela Meisman, as the Personal

(2) Defendants, Quality T-Tops and the Estate of Travis Meisman's Amended Motion to Dismiss (Doc. 12);[3]

(3) Defendant, Amber Michelle Mooney as the Personal Representative of the Estate of Donna L. Rein and Her Survivors, [Amended] Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 15);

(4) Plaintiff, Auto-Owners Insurance Company's Omnibus Response in Opposition (Doc. 20); and

(5) Defendant Colin J. Keeler's Motion to Dismiss (Doc. 22) and Plaintiff Auto-Owners' Response in Opposition (Doc. 24).

As explained below, the motions are granted in part and denied in part.

I. BACKGROUND[4]

A. Statement of Facts

This is a declaratory judgment action in which Plaintiff Auto-Owners Insurance Company ("Auto-Owners") seeks a determination of coverage under a commercial automobile insurance policy ("Policy") issued to Defendant Quality T-Tops & Boat Accessories, Inc. ("Quality T-Tops") for the policy period of June 30, 2021, through June 30, 2022. Defendants Angela Meisman (the "Meisman

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Representative of the Estate of Travis Meisman; and Amber Mooney, as the Personal Representative of the Estate of Donna L. Rein and Her Survivors join in this motion. (Docs. 7, 12, 15).

[3] Defendants Amber Mooney, as the Personal Representative of the Estate of Donna L. Rein and Her Survivors, and Colin Keeler join in this motion. (Docs. 15, 22).

[4] Unless noted otherwise, the facts that follow are taken from Auto-Owners' complaint.

Estate"), Amber Mooney (the "Rein Estate"), Sean Donahue ("Donahue"), Christopher French ("French"), Colin Keeler ("Keeler"), and Austin and Constance Lewis (the "Lewises") have all made claims against Defendants Quality T-Tops, Meisman, and/or Vaughn Mongan ("Mongan"). The facts underlying this declaratory action stem from an automobile accident and are set forth in brief.

On August 26, 2021, Travis Meisman purchased a 2021 Tesla Model S Plaid (the "Tesla"). (Doc. 1, ¶ 16). Travis Meisman, who was the president of Quality T-Tops and the sole owner of the Tesla, was listed as a scheduled driver on the Policy. (Doc. 1, ¶ 17; Doc. 1-2, p. 15).

On September 3, 2021, Travis Meisman allowed Mongan to drive the Tesla. (Doc. 1, ¶ 18). Travis Meisman, as well as French, Donahue, and Keeler were in the car at the time. (*Id*., ¶¶ 19, 21). While Mongan was driving, the Tesla struck the back of a house located at 1498 Caird Way (the "Rein House"), striking Donna Rein, who was inside (the "Accident"). (*Id*., ¶ 18). Donna Rein and Travis Meisman died from injuries they sustained in the Accident, and French, Donahue, and Keeler were injured in the Accident. (*Id*., ¶¶ 19-21). The Rein House, which was owned Donna Rein and the Lewises, sustained property damage as the result of the Accident. (*Id*., ¶ 22).

According to Auto-Owners, on the day after the Accident, September 4,

2021, a representative of Quality T-Tops contacted their insurance agent, Brown & Brown of Florida, Inc. ("Brown & Brown"), and requested that the Tesla be added to the Policy. (*Id*., ¶ 23). Auto-Owners added the Tesla to the Policy, effective September 7, 2021. (*Id*., ¶ 24). According to Defendants, however, the Tesla was insured under the Policy at the time Travis Meisman purchased it. Specifically, Defendants allege that Charles Heinz ("Heinz"), an insurance advisor for Brown & Brown, issued an insurance identification card for the Tesla with an effective date of August 2, 2021, naming Quality T-Tops as the named insured under the Policy.[5] Defendants also allege that Brown & Brown is an insurance broker and a statutory agent of Auto-Owners. (Doc. 12-3, pp. 61-63).

Auto-Owners subsequently received letters of representation from counsel for the Meisman Estate, the Rein Estate, Donahue, French, and Keeler indicating their intent to pursue claims against Quality T-Tops, the Meisman Estate, and/or Mongan. (Doc. 1, ¶ 25).

[5] These allegations are set forth in an amended state-court complaint attached as an exhibit to the motion to dismiss filed by the Meisman Estate and Quality T-Tops. (*See* Doc. 12-3, pp. 61-63). This Court may, and does, take judicial notice of public records. *See Haddad v. Dudek*, 784 F. Supp. 2d 1308, 1324 (M.D. Fla. 2011) (noting that "the Court may take judicial notice of and consider documents which are public records, that are attached to the motion to dismiss, without converting the motion to dismiss into a motion for summary judgment"); Fed. R. Evid. 201(b) (providing that the court may judicially notice a fact that is "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned").

B. Litigation Related to the Accident The Instant Federal Case and State Court Cases

In addition to this instant federal action, five cases involving the Accident have been filed in state court—one of the cases brings claims related to coverage and procurement of the Policy, and four of the cases bring personal injury claims for negligence and wrongful death. Two of the state court cases were filed before Auto-Owners initiated this action in federal court. A brief chronology follows.

1. The Rein Estate v. Mongan, et al.

On October 1, 2021, the Rein Estate filed suit against Mongan and the Meisman Estate in the Circuit Court in and for Pinellas County, Florida (No. 21-4712). The complaint alleges claims for negligence and wrongful death against Mongan, and negligence, negligent entrustment, and wrongful death against the Meisman Estate. (*See* Doc. 1-4).

2. The Meisman Estate, et al. v. Auto-Owners, et al. (hereinafter "the State Court Action")

On December 21, 2021, at 5:09 p.m., the Meisman Estate and Quality T-Tops filed suit against Auto-Owners, Brown & Brown, and Heinz in the Circuit Court in and for Pinellas County, Florida (No. 21-5981). (*See* Doc. 12-1). The initial twenty-count complaint included various claims relating to coverage and procurement of the Policy, including claims for breach of contract and declaratory

judgment against Auto-Owners. Thereafter, a twenty-five-count amended complaint was filed, adding as defendants Mongan and those persons pursing claims arising out of the Accident, *i.e.*, the Rein Estate, Donahue, French, Keeler, the Lewises, and Citizens Property Insurance Corporation ("Citizens").[6] The amended complaint includes, among other claims, breach-of-contract claims against Auto-Owners for failing to defend and indemnify the Meisman Estate and Quality T-Tops under the liability coverage of the Policy, declaratory judgment claims against Auto-Owners, direct benefit claims under the Policy against Auto-Owners, and multiple claims against Brown & Brown, Heinz, and/or Auto-Owners for negligent misrepresentation, negligence, breach of fiduciary duty, breach of contract, and violations of Fla. Stat. § 626.9451 based on Heinz's alleged misrepresentation to Quality T-Tops that the Tesla was added to the Policy before the Accident. (Doc. 12-3).

Relevant to this instant federal action, the Meisman Estate and Quality T-Tops seek "a declaratory judgment on the existence or nonexistence of [the Meisman Estate's] right to defense and indemnity under . . . [the Policy] and of any fact upon which the existence or nonexistence of such rights may depend." (Doc. 12-3, p. 51 at ¶ 231). In short, they seek a declaration that Auto-Owners has a duty

[6] Citizens insured the Rein House. (Doc. 12-3, ¶ 20).

under the Policy to indemnify them for the claims asserted against the Meisman Estate arising out of the Accident and to provide uninsured motorist coverage, medical payments coverage, personal injury protection coverage, and property damage coverage with respect to injuries and damages arising out of the Accident. (*Id*., p. 52).

3. The Instant Federal Action: Auto-Owners v. Quality T-Tops, et al.

On December 21, 2021, at 8:55 p.m., Auto-Owners filed the instant declaratory judgment action. In Count I, Auto-Owners seeks a declaration that the Policy does not provide liability coverage for any accident-related claims brought against either the Meisman Estate or Mongan because, at the time of the Accident, the Tesla was not listed on the Policy and the Meisman Estate and Mongan were not "insureds" under the Policy. (Doc. 1, ¶¶ 36-48). In Count II, Auto-Owners seeks a declaration that the Policy does not provide uninsured motorist coverage for any claims made by the Meisman Estate, Donahue, French, or Keeler because the Tesla was not an auto scheduled in the Policy Declarations. (*Id*., ¶¶ 49-61).

4. Keeler v. Quality T-Tops, et al.

On February 18, 2022, Keeler filed suit against the Meisman Estate, Quality T-Tops, and Mongan in the Circuit Court in and for Pinellas County, Florida (No. 22-821). The five-count complaint alleges claims for negligence and vicarious

liability.

5. French v. Quality T-Tops, et al.

On March 4, 2022, French filed suit against the Meisman Estate, Quality T-Tops, and Mongan in the Circuit Court in and for Pinellas County, Florida (No. 22-1043). The five-count complaint alleges claims for negligence and vicarious liability.

C. The Motions to Dismiss

As indicated above, four motions to dismiss have been filed. All four motions, either via argument or joinder/adoption, ask the Court to decline to exercise jurisdiction by dismissing this case and deferring jurisdiction to the state court. Three of the motions, either via argument or joinder/adoption, raise jurisdictional issues. Each motion is addressed.

By their motion, the Meisman Estate and Quality T-Tops set forth the primary argument regarding abstention in favor of the State Court Action. They ask the Court to decline to exercise jurisdiction over this declaratory judgment action given the pendency of the State Court Action. They argue that this case and the State Court Action present the same or similar issues between the same parties, and the relevant factors weigh in favor of the state court resolving the parties' disputes. They seek dismissal of this action in its entirety. (Doc. 12). By his

motion, Keeler adopts the arguments made in the Meisman Estate's and Quality T-Tops' motion to dismiss. (Doc. 22, pp. 1, 3).

By their motion, French and Donahue move to dismiss Auto-Owners' complaint for lack of subject matter jurisdiction, arguing that Auto-Owners failed to establish diversity jurisdiction under 28 U.S.C. § 1332. (Doc. 7). The Meisman Estate and Quality T-Tops join in this aspect of the motion. (Doc. 12, p. 23). In the alternative, French and Donahue request that the Court abstain from exercising jurisdiction over the instant case while the underlying State Court Action proceeds. (Doc. 7, pp. 14-25).

By its motion, the Rein Estate also moves to dismiss Auto-Owners' complaint for lack of subject matter jurisdiction, albeit for a different reason. It argues that jurisdiction is lacking because Auto-Owners failed to join an indispensable party, namely, Citizens, and Citizens cannot be joined because it is entitled to immunity under the Eleventh Amendment. (Doc. 15, pp. 3-6). The Rein Estate also joins in the Meisman Estate's and Quality T-Tops' motion to dismiss. (*Id*., p. 2).

II. DISCUSSION

Because federal courts are courts of limited jurisdiction with the power to hear only cases authorized by the Constitution and federal statutes, *Kokkonen v.*

Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994), the Court first addresses the jurisdictional arguments raised by French, Donahue, and the Rein Estate in their motions to dismiss. Next, because the Court finds that it has subject matter jurisdiction over this federal declaratory judgment action, it addresses whether dismissal is warranted given the pending State Court Action.

A. Motions to Dismiss Based on Lack of Jurisdiction

1. French's and Donahue's Motion to Dismiss (Diversity Jurisdiction)

French and Donahue move to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that Auto-Owners fails to: allege sufficient facts to establish the requisite amount in controversy; prove by a preponderance of the evidence that the claim(s) on which it bases jurisdiction, which is for an indeterminate amount, meets the jurisdictional threshold; and allege sufficient facts to establish complete diversity because its allegation that its principal place of business is in Michigan is conclusory and unsupported.[7] (Doc. 7, pp. 8-14).

[7] Citing the italicized language below in § 1332(c)(1), French and Donahue appear to argue that Auto-Owners also is "deemed a citizen" of Florida because its insured, Quality T-Tops is a Florida citizen. (Doc. 7, p. 13). That argument fails. Section 1332(c)(1) states:

> [A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, *except that in any direct action against the insurer of*

A motion to dismiss pursuant to Rule 12(b)(1) is a motion challenging the subject matter jurisdiction of the court. Diversity jurisdiction exists where the amount in controversy exceeds $75.000.00 and the suit is between citizens of different states. 28 U.S.C. § 1332(a)(1). Additionally, diversity jurisdiction may be attacked facially or factually. *Morrison v. Amway Corp*., 323 F.3d 920, 924 n.5 (11th Cir. 2003). In a facial challenge, a court assumes the allegations in the complaint are true and determines whether the complaint sufficiently alleges a basis for subject matter jurisdiction. *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990). On the other hand, factual attacks "challenge the 'existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered.'" *Id*. (citation omitted).

Here, French and Donahue argue that Auto-Owners' allegations, on their face, do not provide a sufficient basis for diversity subject matter jurisdiction, and they do not rely on extrinsic evidence. Accordingly, they assert a facial attack

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> *a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant*, such insurer shall be deemed a citizen of . . . every State and foreign state of which the insured is a citizen[.]

28 U.S.C. § 1332(c)(1)(A) (emphasis added). The language on which French and Donahue rely is inapplicable in this case. *See Northbrook Nat'l Ins. Co. v. Brewer*, 493 U.S. 6, 9 (1989) (holding that the direct-action proviso of the diversity statute applies only in actions *against* insurers) (emphasis added).

under Rule 12(b)(1). The question, then, becomes whether the complaint sufficiently alleges a basis for diversity jurisdiction. *Lawrence*, 919 F.2d at 1529. In this case, it does.

In declaratory actions, "the amount in controversy is the monetary value of the object of the litigation from the plaintiff's perspective." *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1077 (11th Cir. 2000) (citation omitted). A plaintiff satisfies the amount in controversy requirement by claiming a sufficient sum in good faith. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). Generally, "[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." *Id.* at 289. Where jurisdiction is based on a claim for indeterminate damages, however, the party seeking to invoke federal jurisdiction bears the burden of proving by a preponderance of the evidence that the claim on which it is basing jurisdiction meets the jurisdictional minimum. *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1357 (11th Cir. 1996), *abrogated on other grounds by Cohen*, 204 F.3d at 1072-77. However, "when a district court can determine, relying on its judicial experience and common sense, that a claim satisfies the amount-in-controversy requirements, it need not give credence to a [party's] representation that the value of the claim is indeterminate." *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1064 (11th Cir. 2010).

Auto-Owners establishes the amount in controversy. Here, Auto-Owners alleges in its complaint that the amount in controversy exceeds $75,000; that Donna Rein and Travis Meisman died as a result of the Accident; that Donahue, French, and Keeler sustained injuries as a result of the Accident; that the Rein House sustained property damage as a result of the Accident; that after the Accident, its counsel received letters of representation from counsel for the Meisman Estate, the Rein Estate, Donahue, French, and Keeler indicating their intent to pursue claims against Quality T-Tops, the Meisman Estate, and/or Mongan; that the Rein Estate filed a negligence and wrongful death lawsuit against the Meisman Estate and Mongan in October 2021, a copy of which is exhibited to the complaint; and that the Policy has a combined liability limit of $1 million per accident and limits uninsured motorist coverage to $300,000 each person/$300,000 each accident. (Doc. 1, ¶¶ 11, 19-27, 31).

Based on these allegations, including the unchallenged factual allegations that two lives were lost and the damages alleged in the Rein Estate's complaint,[8] it

[8] The complaint filed by the Rein Estate alleges "damages in excess of $30,000," including damages for: loss of Donna Rein's earnings from the date of death to the date she would have died had she lived out her normal life expectancy; loss of perspective net estate accumulations; medical expenses due to Donna Rein's injury; funeral and burial expenses that have become a charge against her Estate; and damages on behalf of Donna Rein's survivors, including loss of support and services of their mother and mental pain and suffering from the date of the Accident continuing for the remainder of each survivor's life. (Doc. 1-3, pp. 6-7).

is facially apparent that the amount in controversy is met. *See, e.g., Roe*, 613 F.3d at 1066 (concluding that "judicial experience and common sense dictate that the value of Roe's claims (as pled) [which was for wrongful death] more likely than not exceeds the minimum jurisdictional requirement"); *Carney v. Haddock*, 2016 WL 2869785, at *4 (S.D. Fla. May 16, 2016) ("it is clear from the other portions of the complaint that the claims meet the $75,000 jurisdictional amount. Using common sense, one could reasonably deduce that a wrongful death action, alleging that the decedent drowned while scuba diving because of Defendant's actions, would request more than $75,000 in damages"); *Marsar v. Smith & Nephew, Inc.*, 950 F. Supp. 2d 1228, 1229-30 (M.D. Fla. 2013) ("A review of the original and amended wrongful death complaints filed in state court, including reasonable deductions and inferences made therefrom, reveals that Plaintiff seeks to recover damages exceeding the $75,000 jurisdictional threshold"); *Angrignon v. KLI, Inc.*, 2009 WL 506954, at *4 (S.D. Fla. Feb. 27, 2009) ("Based on the unchallenged factual allegation that a life was lost, the Court has engaged in a common-sense evaluation of the types of damages that Plaintiff is seeking and concludes Defendant has established by a preponderance of the evidence that the amount in controversy is in excess of $75,000").

Auto-Owners also establishes complete diversity. Here, French and Donahue

challenge only the allegations in the complaint relating to Auto-Owners' citizenship. To establish diversity over a corporation, a complaint must include allegations of the corporation's state of incorporation and the state where it has its principal place of business. *See* 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Auto-Owners alleges in its complaint that it is "a Michigan company incorporated in the state of Michigan and organized and existing under the laws of Michigan with its principal place of business in Lansing, Michigan." (Doc. 1, ¶ 1). Those allegations are sufficient, and French and Donahue fail to demonstrate otherwise. To the extent they contend the allegations are insufficient because Auto-Owners is a registered for-profit corporation with the Florida Department of Corporations, does business in Florida, and is a licensed insurer with the Florida Office of Insurance Regulation (Doc. 7, p. 12), Auto-Owners is correct that the allegations do not bear on its principal place of business (*see* Doc. 20, pp. 8-9). Auto-Owners also is correct that the cases on which French and Donahue rely are inapposite. (*See* Doc. 12, pp. 9-11).

For the reasons above, French's and Donahue's joint motion to dismiss for failure to establish diversity jurisdiction is denied. To the extent that the Meisman Estate and Quality T-Tops joined in this aspect of French and Donahue's motion, their motion to dismiss is denied.

2. The Rein Estate's Motion to Dismiss (Failure to Join a Necessary Party)

The Rein Estate moves to dismiss Auto-Owners' complaint pursuant to Federal Rule of Civil Procedure 19, arguing that subject matter jurisdiction is lacking because Auto-Owners failed to join an indispensable party, namely, Citizens. The Rein Estate contends that Citizens is a necessary party because it provided notice to Auto-Owners of a subrogation claim for property damage to the Rein Home. It also argues that Auto-Owners is precluded from joining Citizens as a party to this action because Citizens is entitled to Eleventh Amendment immunity, and dismissal, therefore, is warranted because Citizens cannot be joined. (Doc. 15, pp. 3-6).

Federal Rule of Civil Procedure 12(b)(7) provides that a party may move to dismiss a case for failing to join a party under Rule 19. The determination of whether to dismiss a case for failure to join a necessary and indispensable party under Rule 19 involves a two-step inquiry. *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1344 (11th Cir. 2011). "The first question is whether complete relief can be afforded in the present procedural posture, or whether the nonparty's absence will impede either the nonparty's protection of an interest at stake or subject parties to a risk of inconsistent obligations." *City of Marietta v.*

CSX Transp., Inc., 196 F.3d 1300, 1305 (11th Cir. 1999) (citing Fed. R. Civ. P. 19(a)(1)-(2)). If the court determines that the nonparty's absence will impede its rights, "and the nonparty cannot be joined," the court proceeds to the second step in the analysis and considers whether in "equity and good conscience the action should proceed among the parties before it, or should be dismissed." *Id*. (citing Fed. R. Civ. P. 19(b)). The moving party bears the burden of showing the nature of the interests that will be unprotected in the nonparty's absence. *W. Peninsular Title Co. v. Palm Beach Cnty.,* 41 F.3d 1490, 1492 (11th Cir. 1995) (citation omitted).

The Rein Estate fails to demonstrate that dismissal is warranted for failure to join Citizens. Although the Rein Estate argues that Citizens has an interest in the disposition of this proceeding given its claim for partial subrogation, an insurer that has paid only a part of an insured's loss is not a required party under Rule 19. *See United States v. Aetna Cas. & Surety Co*., 338 U.S. 366, 382 & n.19 (1949) (providing that where the insurer has paid only part of the insured's loss, both the insured and insurer are real parties in interest, but they are not indispensable parties within the meaning of Rule 19); *AGSC Marine Ins. Co. v. Spectrum Underground, Inc*., 2012 WL 2087441, at *1-2 (M.D. Fla. June 8, 2012) (same). Moreover, the Rein Estate does not argue that complete relief cannot be afforded the current parties absent Citizens' joinder. Nor does it meet its burden of showing the nature

of the interests that would be unprotected in Citizens' absence. For the reasons above, the Rein Estate's motion to dismiss for failure to join an indispensable party is denied.

B. Motions to Dismiss or Stay in Favor of the State Court Action

The Meisman Estate and Quality T-Tops request that the Court dismiss or stay this federal declaratory judgment action under the *Wilton/Brillhart* abstention doctrine given the pendency of the State Court Action that involves the same parties and the same or similar issues. (Doc. 12). The Rein Estate and Keeler join in this motion (Docs. 15, 22), and French and Donahue seek abstention as an alternative form of relief (Doc. 7). Auto-Owners counters that abstention is not warranted under *Wilton/Brillhart* because this action is not parallel to the State Court Action and, even if the actions were parallel, the relevant factors do not weigh in favor of dismissal. (Doc. 20).

The Declaratory Judgment Act provides that a district court "may declare the rights and other legal relations of any interested party seeking this declaration." 28 U.S.C. § 2201. "It vests district courts with discretion to dismiss declaratory suits, when, in their best judgment, the costs outweigh the benefits." *James River Ins. Co. v. Rich Bon Corp.*, 34 F.4th 1054, 1059 (11th Cir. 2022). "Thus—even when a civil action satisfies federal subject matter jurisdictional prerequisites—a district

court still maintains discretion about whether and when to entertain" a declaratory suit. *Stevens v. Osuna*, 877 F.3d 1293, 1311 (11th Cir. 2017) (citing *Wilton v. Seven Falls Co*., 515 U.S. 277, 282 (1995)) (internal citations and quotations omitted). "Ordinarily it would be uneconomical as well as vexatious for a district court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties." *Brillhart v. Excess Ins. Co. of Am*., 316 U.S. 491, 495 (1942).

"When district courts decide whether to proceed with declaratory judgment actions that raise issues also disputed in state court proceedings, they are called to balance conflicting interests—to foster efficient dispute resolution while still preserving the States' interests in resolving issues of state law in their own courts." *James River Ins. Co.*, 34 F.4th at 1058. Guided by the "general principles expressed by the Supreme Court" and "considerations of federalism, efficiency, and comity," the Eleventh Circuit has articulated a list of nine factors for district courts to consider "in balancing state and federal interests":

> (1) the strength of the state's interest in having the issues raised in the federal declaratory action decided in the state courts;
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> (2) whether the judgment in the federal declaratory action would settle the controversy;
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> (3) whether the federal declaratory action would serve a useful

> purpose in clarifying the legal relations at issue;
>
> (4) whether the declaratory remedy is being used merely for the purpose of "procedural fencing"—that is, to provide an arena for a race for res judicata or to achieve a federal hearing in a case otherwise not removable;
>
> (5) whether the use of a declaratory action would increase the friction between our federal and state courts and improperly encroach on state jurisdiction;
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> (6) whether there is an alternative remedy that is better or more effective;
>
> (7) whether the underlying factual issues are important to an informed resolution of the case;
>
> (8) whether the state trial court is in a better position to evaluate those factual issues than is the federal court; and
>
> (9) whether there is a close nexus between the underlying factual and legal issues and state law and/or public policy, or whether federal common or statutory law dictates a resolution of the declaratory judgment action.

Ameritas Variable Life Ins. Co. v. Roach, 411 F.3d 1328, 1331 (11th Cir. 2005) (citation omitted). This list "is neither absolute nor is any one factor controlling." *Id*. The factors are "merely guideposts in furtherance of the Supreme Court's admonitions in *Brillhart* and *Wilton*." *Id*.

Here, on balance, the principles underlying *Brillhart* and *Wilton* as well as the *Ameritas* factors weigh in favor of dismissing the instant federal declaratory

action in favor of the State Court Action.[9] The state has an interest in having the issues raised in this federal declaratory judgment action decided in the state courts: the federal action concerns an insurance policy procured by a Florida corporation in Florida; the Policy is governed by Florida substantive law; the Tesla was registered in Florida; the Accident and resulting deaths occurred in Florida; aside from French, all named Defendants are Florida citizens; and the coverage issues raise questions of Florida law and involve the same factual disputes as the breach of contract claims asserted against Auto-Owners in the Meisman Action. Thus, the first *Ameritas* factor weighs in favor of abstention. Additionally, and relatedly, federal law does not dictate a resolution of the federal declaratory judgment action; rather, there is a close nexus between the underlying factual and legal issues and Florida state law. Thus, the ninth *Ameritas* factor also weighs in favor of abstention.

Moreover, a judgment in this action would not settle the controversy; instead, it would amount to piecemeal litigation. This Court has before it "only an

[9] Auto-Owners' contention that the Court need not reach the *Ameritas* factors because this federal declaratory judgment action and the State Court Action are not parallel actions has been rejected by the Eleventh Circuit. *See James River Ins. Co*., 34 F.4th at 1060 (holding that the district court erred by assessing whether the federal and state cases were "parallel" as a prerequisite to considering the *Ameritas* factors); *Nat'l Trust Ins. Co. v. S. Heating & Cooling, Inc.*, 12 F.4th 1278, 1284 (11th Cir. 2021) ("the existence of a parallel proceeding is not a prerequisite to a district court's refusal to entertain an action under the Declaratory Judgment Act").

incomplete set of claims," whereas the State Court Action "encompasse[s] the complete controversy." *See Ameritas*, 411 F.3d at 1331. The Meisman Estate, the Rein Estate, French, Donahue, and Keeler already have brought their claims against Auto-Owners in state court, and they cannot be forced to bring those claims here. As it stands, the State Court Action includes all the parties to the dispute, which is controlled by state law. While Auto-Owners argues that its claims are not subsumed in those asserted in the State Court Action because it also seeks a declaration as to whether Mongan is covered under the liability coverage of the Policy, nothing before the Court indicates there is a dispute as to whether Mongan is covered under the Policy. In these circumstances, "it would be uneconomical as well as vexatious" for this Court to hear the declaratory judgment action "where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties." *See Brillhart*, 316 U.S. at 495. Further, maintaining this federal declaratory judgment action would not serve a more useful purpose than the State Court Action, nor would it serve to clarify the legal relations at issue because it could give rise to contradictory rulings on issues of fact that have not yet been determined by the state court. Thus, the second and third *Ameritas* factors weigh in favor of abstention.[10]

[10] The Court also has considered the fourth, fifth, and sixth *Ameritas* factors, as well as the

Further, the underlying factual issues—those involving when, if at all, the coverage was bound; when the Tesla was added to the Policy; whether Travis Meisman was an insured under the Policy; and the statutory relationship, if any between Brown & Brown, Heinz, and Auto-Owners—are important to an informed resolution of this federal declaratory judgment action. And, given the proceedings underway in the State Court Action, the state court is in a better position to evaluate those factual issues than this Court because the issues are squarely before it. Thus, the seventh and eight *Ameritas* factors also weigh in favor of abstention.

Finally, allowing this declaratory judgment action to proceed "would amount to the unnecessary and inappropriate '[g]ratuitous interference' with the more encompassing and currently pending state court action that was contemplated by the Supreme Court in *Brillhart* and *Wilton*." *See Ameritas*, 411 F.3d at 1332 (alteration in original). Principles of federalism, efficiency, and comity all militate in favor of abstention and dismissal. *See id*. at 1331.

CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED**:

(1) Defendants Christopher C. French's and Sean P. Donahue's Joint

parties' arguments in support. On balance, those factors do not weigh in favor or against abstention.

Motion to Dismiss, or Alternatively, Joint Motion to Abstain (Doc. 7) is **GRANTED in part** and **DENIED in part**. The motion is denied to the extent it seeks dismissal for lack of subject matter jurisdiction on grounds of diversity. The motion is granted to the extent it requests the Court to abstain and/or dismiss this action.

(2) Defendants, Quality T-Tops and the Estate of Travis Meisman's Amended Motion to Dismiss (Doc. 12) is **GRANTED in part** and **DENIED in part**. The motion is denied to the extent it seeks dismissal based on lack of subject matter jurisdiction, *i.e.*, via joining in French's and Donahue's motion to dismiss for lack of subject matter jurisdiction. The motion is granted to the extent it requests the Court to abstain and/or dismiss this action.

(3) Defendant, Amber Michelle Mooney as the Personal Representative of the Estate of Donna L. Rein and Her Survivors, [Amended] Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 15) is **GRANTED in part** and **DENIED in part**. The motion is denied to the extent it seeks dismissal based on lack of subject matter jurisdiction for failure to join a necessary party. The motion is granted to the extent it requests the Court to abstain and/or dismiss the action,

i.e., via joining in the Meisman Estate's and Quality T-Tops' motion to dismiss.

(4) Defendant Colin J. Keeler's Motion to Dismiss (Doc. 22) is **GRANTED**.

(5) The complaint (Doc. 1) is **DISMISSED** in its entirety.

(6) The Clerk is directed to close this case.

DONE AND ORDERED at Tampa, Florida, this 28th day of July 2022.

SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record