IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA EAGLES LIMITED PARTNERSHIP Plaintiff, v. FACTORY MUTUAL INSURANCE COMPANY Defendant.	Case No. 2:21-cv-01776-MMB

PLAINTIFF PHILADELPHIA EAGLES LIMITED PARTNERSHIP'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO REMAND

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Plaintiff Philadelphia Eagles Limited Partnership (the "Eagles") respectfully submits this Memorandum in support of its Motion to remand this case to the Court of Common Pleas of Philadelphia County, Pennsylvania.

INTRODUCTION

The Eagles seek a declaratory judgment regarding the scope of their insurance coverage for the losses they sustained and continue to sustain due to the COVID-19 pandemic. Defendant Factory Mutual Insurance Company ("Factory Mutual") disputes coverage for the Eagles' loss.

The Eagles filed a declaratory judgment action in the Court of Common Pleas of Philadelphia County, Pennsylvania, seeking a declaration of the Eagles' rights and Factory Mutual's obligations. Factory Mutual removed that action to this Court. In the present Motion, the Eagles seek an order remanding the case back to the Court of Common Pleas, so that the state court can resolve the novel questions of state insurance law at issue, and so that this Court can avoid interference in the delicate state regulatory issues involved and give appropriate respect to the important state interests implicated by this action.

For example, among the novel questions which no Pennsylvania appellate court has addressed is the interpretation of a property insurance policy covering, as here, "*all risks of* physical loss or damage" versus "direct physical loss or damage." As set forth in the Complaint, use of the words "risks of" in the insuring agreement means that FM's policy covers *risks* of including ***threats*** of physical loss or damage to property. Complaint ¶¶ 38-40, 66-71, 83-86. Outside of the context of this type of property insurance, there is Pennsylvania Supreme Court precedent supporting such a construction. *See 401 Fourth St., Inc. v. Invs. Ins. Grp.*, 583 Pa. 445, 459, 879 A.2d 166, 174 (2005) (policy language "'risks of direct physical loss involving collapse of a building'… contemplates broader coverage than policy language simply employing the term

'collapse'" when "compared with other insurance policy language that does not suggest such broad coverage") (citing for comparison *Weiner v. Selective Way Ins. Co.,* 793 A.2d 434, 436 (Del. Super. Ct. 2002) ("[Insurer] will pay for direct loss or damage to Covered Property, caused by collapse of a building or any part of a building ....").

Given that the highest court in the Commonwealth has already found that an insurer's choice to use "risks of" rendered the coverage at issue broader, a Pennsylvania state court should be given the opportunity to determine whether such a construction is equally applicable to the Factory Mutual Policy at issue here.

It has been well settled for decades that district courts have discretion under the Declaratory Judgment Act to determine whether a state or federal court is the better forum for a declaratory judgment action filed in and removed from state court, and to remand the case to state court if that is the better forum to resolve the dispute. *See Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494 (1942). Moreover, a long line of Third Circuit cases has held that when a declaratory judgment action involves issues of state insurance law – an area of the law in which state regulatory interests are paramount and no federal interests are implicated – federal courts should be particularly reluctant to assert their discretionary jurisdiction over the action. *E.g.*, *Reifer v. Westport Ins. Corp*., 751 F.3d 129, 140–41 (3d Cir. 2014); *State Auto Ins. Cos. v. Summy*, 234 F.3d 131, 135 (3d Cir. 2000); *Atlantic Mut. Ins. Co. v. Gula*, 84 Fed. Appx. 173, 174-75 (3d Cir. 2003).

By utilizing its discretion to decline federal jurisdiction, a district court avoids infringing on state courts' development of the law surrounding complex issues of state regulatory policy and minimizes the uncertainty and inconsistent rulings that can result from federal courts having to make predictions regarding how state courts will rule on important issues of state law still working their way through state courts. *Reifer*, 751 F.3d at 140-41. "The Third Circuit has remarked, in

particular, that where the primary issue raised is one of state law and '[w]here state law is uncertain or undetermined, the proper relationship between federal and state courts requires district courts to "step back" and be "particularly reluctant" to exercise [Declaratory Judgment Act] jurisdiction.'" *Zlock, P.C. v. Continental Casualty Company*, No. 20-2585, 2021 WL 1193371, at *2 (E.D. Pa. Mar. 30, 2021) (quoting *Reifer*, 751 F.3d at 148).

In *Zlock*, and numerous other cases in this District where, as here, plaintiff sought purely declaratory relief regarding insurance coverage for losses incurred as a result of the Coronavirus pandemic, the Court has declined federal jurisdiction. *Zlock*, 2021 WL 1193371, at *4; *Schwartz Law Firm, LLC v. Selective Ins. Co. of S.C.*, No. 20-6055, 2021 WL 698189 (E.D. Pa. Feb. 23, 2021); *Jul-Bur Assocs., Inc. v. Selective Ins. Co. of Am.*, No. 20-1977, 2021 WL 515484 (E.D. Pa. Feb. 11, 2021); *i2i Optique LLC v. Valley Forge Ins. Co.*, No. 20-3360, 2021 WL 268645 (E.D. Pa. Jan. 27, 2021); *V&S Elmwood Lanes v. Everest Nat'l Ins. Co.*, No. 20-3444, 2021 WL 84066 (E.D. Pa. Jan. 11, 2021); *Greg Prosmushkin, P.C. v. Hanover Ins. Grp.*, 479 F. Supp. 3d 143 (E.D. Pa. 2020). The other district courts in Pennsylvania that have considered the issue have also uniformly declined federal jurisdiction over such actions. *E.g.*, *Amos Inc. v. Firstline National Insurance Company*, No. 20-1637, 2021 WL 1376205 (W.D. Pa. Mar. 5, 2021), *report and recommendation adopted*, 2021 WL 1375472 (W.D. Pa. Apr. 12, 2021); *Venezie Sporting Goods v. Allied Ins. Co. of Am.*, No. 20-cv-1066, 2020 WL 5651598 (W.D. Pa. Sept. 23, 2020). Indeed, we know of no cases in the district courts of Pennsylvania in which plaintiff sought purely declaratory relief regarding insurance coverage for losses incurred as a result of the Coronavirus pandemic and the court considered the issue and ruled that it would exercise its discretionary

jurisdiction over the action rather than remanding or dismissing it.[1]

More specifically, federal courts in Pennsylvania have repeatedly remanded declaratory judgment actions, like this one, regarding insurance coverage for Coronavirus-related losses that had been removed by insurers to federal court. *Schwartz Law Firm, LLC*, 2021 WL 698189, at *3 ("The Court will therefore adhere to the principle that it is important that district courts 'step back' and allow the state courts the opportunity to resolve unsettled state law matters."); *Greg Prosmushkin, P.C.*, 479 F. Supp. 3d at 151 ("It is neither practical nor wise for this Court to attempt to predict how Pennsylvania would decide this novel and complex issue of state law when the discretion exists to allow Pennsylvania courts to address the matter for themselves"); *Venezie Sporting Goods*, 2020 WL 5651598, at *5 ("While it is undeniable that the COVID-19 pandemic presents a complex and novel factual situation, the resulting legal disputes are deeply tied to Pennsylvania public policy, as well as the intricacies of Pennsylvania insurance contract interpretation, such that the Court believes it is most appropriate to 'step back' in this instance.").

The same analysis that led those judges to remand each of these COVID-19 insurance coverage declaratory judgment actions back to state court applies equally here: this case involves novel and complex issues of state insurance law currently working their way through Pennsylvania state court, in which the state has compelling regulatory interests, and in which there is no countervailing federal interest – making the state court the better forum to resolve the dispute.

[1] While there appear to be a few COVID-19 actions seeking declaratory relief in which neither the parties nor the court raised the issue of discretionary jurisdiction and the court proceeded to the merits without addressing the issue, it is well settled that a case "in which jurisdiction has been assumed by the parties, and assumed without discussion by the court, does not create binding precedent" with regard to jurisdictional issues. *Goldman v. Citigroup Global Markets Inc*., 834 F.3d 242, 251 (3d Cir. 2016) (holding that a "summary and unexplained jurisdictional ruling" in a footnote, like other so-called "drive-by jurisdictional ruling[s]," has no precedential effect) (citations and internal marks omitted).

Therefore, the Eagles respectfully request that this Court grant the motion to remand.

STATEMENT OF THE CASE

Due to the Coronavirus pandemic, the Eagles have incurred, and continue to incur, substantial losses caused by the dangers of Coronavirus and the resulting interruption of the team's activities. Complaint ¶ 5. The Eagles' covered premises have been rendered unusable in the way that they had been used before the onset of the pandemic, depriving the Eagles of traditional physical use of the insured premises. *Id.* ¶ 10. Indeed, the Eagles were required to close entirely, or severely restrict access to, their covered premises, including their stadium, corporate headquarters, training facilities, and team merchandise stores. *Id.* Under the Policy's express terms, coverage is provided to the Eagles where, among other circumstances, the Eagles' use of its property is diminished or restricted to prevent the spread of Coronavirus and resulting loss or damage to the covered premises. *Id.*

Factory Mutual has disputed coverage for the Eagles' loss. *Id.* ¶ 8.

As a result, on March 11, 2021, the Eagles filed a complaint in the Court of Common Pleas, Philadelphia County, seeking declaratory relief.

On April 15, 2021, Factory Mutual filed a notice of removal in this Court.

Factory Mutual filed a motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), on April 22, 2021.[2]

[2] The Eagles respectfully submit that the Court should not reach the issues presented by Factory Mutual's Rule 12(b)(6) motion unless it first decides to assert discretionary jurisdiction over this matter. *See Schwartz Law Firm LLC*, 2021 WL 698189 at *1 (in declaratory judgment action related to COVID-19 insurance coverage, defendant first filed a motion to dismiss pursuant to Rule 12(b)(6), and then plaintiff filed a motion to remand – the court granted the motion to remand and therefore did not reach the Rule 12(b)(6) motion); *see also Zlock*, 2021 WL 1193371, at *1 (despite pendency of Rule 12(b)(6) motion to dismiss, court *sua sponte* determined that it would decline federal jurisdiction over declaratory judgment action related to

LEGAL ARGUMENT

I. DISTRICT COURTS HAVE DISCRETION TO DECLINE JURISDICTION OVER DECLARATORY JUDGMENT ACTIONS INVOLVING UNSETTLED STATE LAW ISSUES

The Declaratory Judgment Act provides that federal courts "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a) (emphasis added). It has long been settled that this statutory provision confers discretionary jurisdiction, rather than compulsory jurisdiction, upon federal courts—a significant departure from the general rule that federal courts normally have a duty to exercise jurisdiction whenever such jurisdiction is authorized. *See Brillhart*, 316 U.S. at 494. Thus, "district courts 'possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites.'" *Schwartz Law Firm, LLC*, 2021 WL 698189, at *1 (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995)); *see also Allstate Ins. Co. v. Manilla*, No. 11–5102, 2012 WL 1392559, at *1 (E.D. Pa. Apr. 20, 2012) (Baylson, J.) ("The [Declaratory Judgment] Act is somewhat unique, however, in that district courts have discretion whether or not to exercise that jurisdiction.").

The discretionary jurisdiction provision of the Declaratory Judgment Act applies equally to declaratory judgment actions filed in state court pursuant to state declaratory judgment laws, when those actions are removed to federal court. *Reifer*, 751 F.3d at 136. As a result, district courts have broad discretion to decline jurisdiction over declaratory judgement actions, regardless of whether the action was originally filed in federal or state court. *Id*.

COVID-19 insurance coverage and dismissed case on jurisdictional grounds without deciding Rule 12(b)(6) motion).

"[W]hen applicable state law is uncertain or undetermined, district courts should be particularly reluctant to exercise" federal jurisdiction over declaratory judgment actions. *Id.* at 141 (citations and internal marks omitted); *see also Greg Prosmushkin, P.C.*, 479 F. Supp. 3d at 147 ("Where the action presents novel, unsettled, and/or complex issues of state law, district courts should be particularly reluctant to exercise their jurisdiction."). Moreover, the Third Circuit has held that "the proper relationship between federal and state courts requires district courts to 'step back' and permit state courts to resolve unsettled state law matters." *Reifer*, 751 F.3d at 141 (citation omitted).[3]

Where, as here, "the plaintiff only asserts a claim for declaratory relief, the court retains discretion to decline jurisdiction of the entire action after considering a multi-factor test set forth by the Third Circuit in *Reifer*." *V&S Elmwood Lanes, Inc.*, 2021 WL 84066, at *2 (citation and internal marks omitted).[4] Under *Reifer*, a district court in this Circuit considers the following factors when determining whether to remand a declaratory judgment action removed from state court:

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[3] However, even where the state law at issue is more straightforward, that does not mean that the federal court should necessarily exert federal jurisdiction over state law declaratory judgment claims – in the absence of a federal interest – merely because a party perceives an advantage from being in a federal forum, as the Third Circuit noted in *Summy*, 234 F.3d at 136: "When the state law is firmly established, there would seem to be even less reason for the parties to resort to the federal courts."

[4] Here, the only claim in the Eagles' Complaint is for declaratory relief; this is not a claim for money damages that is "masquerading" as a declaratory judgment action. *See Venezie Sporting Goods*, 2020 WL 5651598, at *3. The issue turns on the nature of the relief plaintiff seeks rather than the nature of the allegations regarding defendant's conduct (even if that conduct could amount to a breach of contract), and allegations regarding a defendant's failure to perform its obligations, or plaintiff's losses and damages, do not create a legal claim that would affect the court's discretion to decline jurisdiction. *See id.*; *Greg Prosmushkin, P.C.*, 479 F. Supp. 3d at 147–48. For example, in *Greg Prosmushkin, P.C.*, the court ruled that where, as here, an action seeks a broad declaration "regarding the rights and obligations of the parties for the entire duration of the insurance policy, as it continues to run simultaneously with the COVID-19 pandemic," the court has discretion to decline jurisdiction.

> (1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy;
>
> (2) the convenience of the parties;
>
> (3) the public interest in settlement of the uncertainty of obligation;
>
> (4) the availability and relative convenience of other remedies;
>
> (5) a general policy of restraint when the same issues are pending in a state court;
>
> (6) avoidance of duplicative litigation;
>
> (7) prevention of the use of the declaratory action as a method of procedural fencing or as a means to provide another forum in a race for res judicata; and
>
> (8) (in the insurance context), an inherent conflict of interest between an insurer's duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion.

Reifer, 751 F.3d at 146.

Moreover, "the existence or non-existence of pending parallel state proceedings is but one factor for a district court to consider" in making its discretionary decision, and while it is an "important" factor it is one that can be "outweighed by opposing factors." *Id.* at 144. Indeed, courts in this District have not hesitated to decline to exercise jurisdiction over declaratory judgment actions involving COVID-19 insurance coverage in the absence of a parallel state proceeding involving the same parties. *E.g.*, *V&S Elmwood Lanes v. Everest Nat'l Ins. Co.*, 2021 WL 84066, at *3-4 & n.2. This includes cases in which the action was filed in state court and was removed to federal court. *E.g.*, *Schwartz Law Firm, LLC*, 2021 WL 698189, at *3. Indeed, not only have the courts in this District that have repeatedly declined jurisdiction been untroubled by the fact that there is no parallel state case involving the same or similar parties, they have cited the existence of state court cases involving the same or similar issues – *i.e.*, the scope of insurance coverage relating to the Coronavirus pandemic – as a key factor supporting the court's discretionary decision to decline federal jurisdiction. *See Zlock*, 2021 WL 1193371, at *4 (declining federal jurisdiction, despite the absence of a parallel state court case, due to "the many

cases presenting almost identical issues, which are currently working their way through the state courts").

As explained below, because this is a case involving novel issues of state law that are the subject of litigation currently moving through the state courts, involving important state interests and no federal interests, and risking inconsistent rulings if federal courts are forced to predict how the Pennsylvania appellate courts would rule on these state law issues, each of the *Reifer* factors either militates in favor of this Court declining to exercise jurisdiction, or is a neutral or inapplicable factor that does not alter the balance. Thus, the *Reifer* analysis leads to the conclusion that this case should be remanded.

II. FEDERAL COURTS FREQUENTLY DECLINE JURISDICTION OVER DECLARATORY JUDGMENT ACTIONS INVOLVING INSURANCE LAW

Where, as here, a declaratory judgment action involves insurance law, district courts are especially likely to "step back" and allow state courts to resolve the case. "Insurance is a creature of state law. Congress' passage of the McCarran-Ferguson Act in 1945 effectively ensured that states were the primary insurance regulators." *Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *1. Therefore, declaratory judgment actions involving insurance coverage inherently "lack a federal question or interest." *Reifer*, 751 F.3d at 141 (citation and internal marks omitted). "The desire of insurance companies and their insureds to receive declarations in federal court on matters of purely state law has no special call on the federal forum" and "the state's interest in resolving its own law must not be given short shrift simply because [parties] perceive some advantage in the federal forum." *Id.* (citations and internal marks omitted); *see also Encompass Insurance Company of America v. Connelly*, No. 15-737, 2015 WL 13711717, at *2 (W.D. Pa. June 10, 2015) ("[T]his action presents the common case of an insurance company coming to federal court, under diversity jurisdiction, to receive declarations on purely state law matters. This weighs heavily

against the Court exercising jurisdiction over this declaratory judgment action.").

Here, as in other cases involving insurance coverage relating to COVID-19, there is a significant state interest in the resolution of these novel insurance law issues. "[T]he very issues the Court is presented with and asked to resolve are novel questions of state law. . . . Although the Court can issue a decision as to how it expects Pennsylvania courts to rule, those issues are themselves presently winding through the state courts." *Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *3. "'The fact that district courts are limited to predicting—rather than establishing—state law requires "serious consideration" and is "especially important in insurance coverage cases."'" *i2i Optique LLC*, 2021 WL 268645, at *3 (quoting *Reifer*, 751 F.3d at 148). Declining federal jurisdiction over this declaratory judgment action would allow the state courts to carefully develop state law governing Coronavirus insurance coverage. *Schwartz Law Firm, LLC*, 2021 WL 698189, at *2. While a federal court can "apply general principles of insurance contract interpretation under Pennsylvania law . . .[,] insurance disputes arising from government shutdown orders described as intending to address the pandemic pose a new slate of state-law specific issues." *Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *4. Thus, a district court should use its discretion to allow a state court to resolve these issues, rather than "adding a square to an already disjointed patchwork of decisions" regarding the availability of insurance coverage for the losses suffered as a result of this once-in-a century event. *Id.*

III. APPLYING THE *REIFER* TEST, THIS COURT SHOULD DECLINE FEDERAL JURISDICTION – CONSISTENT WITH OTHER COURTS ADDRESSING SIMILAR ACTIONS

Decisions in this District and the Western District of Pennsylvania that have considered the discretionary jurisdiction issue and applied the Third Circuit's eight-factor *Reifer* test have

uniformly held that those factors militate in favor of declining federal jurisdiction over purely state law declaratory judgment actions addressing insurance coverage for Coronavirus-related losses.

These courts have held that the first factor—the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy—strongly favors declining federal jurisdiction and therefore remanding or dismissing the action. They have noted that the COVID-19 insurance coverage cases necessarily involve "novel questions of state law," in which the "Commonwealth's appellate courts have not yet articulated the contours of COVID-19 related insurance coverage." *Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *3. Thus, "the singular challenges posed by the COVID-19 pandemic and the resulting legal challenges that implicate state insurance law and by extension, public policy, are best reserved to the Commonwealth's appellate courts." *Id.* at *5.

For example, the present case involves unsettled issues concerning the application of the Policy's language regarding coverage for the "risks of" physical loss or damage (as opposed to language limiting coverage to "direct physical loss," as in other policies) to the circumstances in which the Eagles limited or ceased their operations at covered premises because of the imminent "risk" that Coronavirus would cause physical loss or damage to covered property. *See 401 Fourth St.,* 583 Pa. at 459, 879 A.2d at 174; Complaint ¶¶ 38-40, 66-71, 83-86. Likewise, the application of the Policy's Interruption by Communicable Disease coverage, including that it only insures "costs" as opposed to "loss," raises questions of state insurance law that have not been addressed by Pennsylvania appellate courts. *See id.* ¶¶ 124-35.

The same is true for Factory Mutual's contention that the Policy's "contamination" exclusion applies to limit or bar coverage. Whether that exclusion, which is essentially a pollution exclusion with the word "virus" incongruously inserted, bars coverage for losses caused by a

pandemic is an unsettled question of state insurance law with important implications for Pennsylvania regulatory policy that should be addressed by the Pennsylvania courts. *See id.* ¶¶ 137-45. Indeed, the Pennsylvania Supreme Court has in the past examined the comparably inscrutable "qualified" pollution exclusion and found that discovery into the drafting and regulatory history of that exclusion was warranted in order to interpret its meaning. *See Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 566 Pa. 494, 502, 781 A.2d 1189, 1193 (2001). Likewise, the Eagles' allegation that Factory Mutual's coverage analysis is contrary to Pennsylvania state law and public policy is yet another unsettled question that is more appropriate for determination by a state court. *See id.* ¶ 158.[5]

A ruling by a federal court regarding such issues "would do nothing to clarify the state court landscape for COVID-19 insurance disputes because in the absence of a controlling decision by the Pennsylvania Supreme Court, a federal court applying that state's substantive law must predict how Pennsylvania's highest court would decide the case. The Court's prediction would not bind any courts considering similar disputes. By contrast, state court resolution would contribute to a necessary and still developing legal framework governing COVID-19 insurance disputes." *Schwartz Law Firm, LLC*, 2021 WL 698189 at *2 (citations and internal marks omitted). "Given the novelty of the state law issue of insurance coverage for losses resulting from the COVID-19 pandemic, the Pennsylvania state courts are clearly better equipped to settle the

[5] This case additionally involves novel questions regarding the application of Policy language concerning Time Element coverage, covering as "Extra Expense" the "extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured's business" and "extra costs of temporarily using property or facilities of the Insured or others," among other expenses, during the Period of Liability. *See id.* ¶¶ 116-23.

uncertainty of obligation, and it is in the public's interest for them to do so." *Greg Prosmushkin, P.C.*, 479 F. Supp. 3d at 150.

The third factor—the public interest in settlement of the uncertainty of obligation—also strongly weighs in favor of remand. The public interest in resolving insurance coverage disputes like the present case is an important state interest; there is no countervailing federal interest. *See Reifer*, 751 F.3d at 141. Indeed, this District held in *Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *4, that there is a "compelling public interest in having these issues adjudicated by the Commonwealth courts when [a federal court] has discretion to decline jurisdiction." Moreover, "clarifying whether or not certain language in insurance policies creates coverage for losses due to COVID-19 will impact a significant portion of the population operating businesses of all kinds throughout the Commonwealth." *Greg Prosmushkin, P.C.*, 479 F. Supp. 3d at 151. Although federal courts may sometimes be called upon to decide issues of state law, the situation presented by a once-in-a-century pandemic is unique, and "pose[s] a new slate of state-law specific issues," with "far-reaching consequences beyond a single covered premise," and therefore militates in favor of resolution by state courts. *Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *4. And since "there is not yet a body of caselaw developed by Pennsylvania courts on these issues due to the relative recency of the COVID-19 pandemic, the public is not better served by federal courts resolving these state law issues." *Schwartz Law Firm, LLC*, 2021 WL 698189, at *3 (citation and internal marks omitted).

The fifth factor—a general policy of restraint when the same issues are pending in a state court—self-evidently favors remand here. "Whether an insured is covered for losses caused by COVID-19 is an issue pending in the Pennsylvania state courts. . . . Courts in this Circuit have recognized that such cases are pending and, as a result, determined that the fifth factor weighs

against retaining jurisdiction." *Id.* at *3 (citations and internal marks omitted); *accord V&S Elmwood Lanes, Inc.*, 2021 WL 84066, at *4; *see also Zlock*, 2021 WL 1193371, at *4 ("Factor five also weighs against the exercise of jurisdiction because of the numerous cases with identical issues pending in state court.").

The sixth factor—avoidance of duplicative litigation—also militates in favor of remanding this case. "[B]y declining to exercise jurisdiction, this Court will leave the matter to be decided by a state court and avoid the potential for duplicative litigation, as encouraged by [*Reifer*] factor six." *Schwartz Law Firm, LLC*, 2021 WL 698189 at *3 (citations and internal marks omitted). In the context of insurance coverage litigation relating to the current pandemic, a federal court should not "step in and exercise jurisdiction over this matter [because] it could potentially issue a decision inconsistent with that of the state courts. Such an outcome would upend uniformity at a time when businesses need clarity and consistency in law." *i2i Optique LLC*, 2021 WL 268645, at *6 (citation and internal marks omitted).

The remaining *Reifer* factors (2, 4, 7, and 8) are neutral or inapplicable, militating neither for nor against federal jurisdiction of insurance coverage litigation regarding the Coronavirus pandemic. *See Jul-Bur Assocs., Inc.*, 2021 WL 515484, at *4-5.

Thus, a consideration of all of the *Reifer* factors leads to the same conclusion that all judges of this District and the Western District of Pennsylvania have reached after consideration of the same factors under the same circumstances: that the Court should decline federal jurisdiction.

CONCLUSION

For the foregoing reasons, the Eagles respectfully request that this Court exercise its "substantial discretion" to decline jurisdiction over this action and remand this proceeding to the Court of Common Pleas of Philadelphia County, Pennsylvania.

Dated: April 30, 2021

Respectfully submitted,

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