

DISTRICT OF NEW HAMPSHIRE

Ann Theresa Johnson
and James B. Johnson, Jr.,
Plaintiffs

v.

Civil No. 97-56-M

Reliance Insurance Company of Illinois,
Defendant

O R D E R

Defendant insurance company moves for summary judgment on grounds that plaintiffs have no standing to bring this declaratory judgment action relative to the scope of insurance coverage afforded under a policy issued by defendant to its insured (an alleged tort feasor whom plaintiff is suing in state court). Defendant says that under New Hampshire law, applicable here, this suit is premature since no determination of tort liability has been made, and, until that happens, plaintiffs have no claim to or interest in the policy, and there is no justiciable case or controversy.

In objecting to defendant's motion, plaintiffs make no effort to even address the points raised, but simply refer in cursory fashion to arguments in their memorandum supporting their own motion for summary judgment – arguments that have nothing to do with standing, ripeness or whether there exists a justiciable case or controversy. Apparently plaintiffs concede sub silentio that this suit is premature, given their failure to address what appear to be dispositive points of law. See Anagnos v.

Scottsdale Ins. Co., Docket No. 95-E-166, New Hampshire Superior Court (Hillsborough, Northern District), Order dated August 21, 1995 (Groff, J.), attached as Exhibit A to defendant's motion for summary judgment.

Defendant's motion for summary judgment (document no. 10) is granted; plaintiff's motion for summary judgment (document no. 9) is denied; the case is dismissed without prejudice.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

March 13, 1998

cc: Saheed W. Dahar, Esq.
David C. Dunn, Esq.