

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>PARK UNIVERSITY ENTERPRISES, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	
	)	<b>No. 03-2522-KHV</b>
<b>AMERICAN CASUALTY COMPANY OF</b>	)	
<b>READING, PA,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**ORDER**

Plaintiff filed suit seeking a declaratory judgment that defendant has a duty to defend and indemnify it in a state court class action lawsuit. On cross motions for partial judgment on the pleadings, the Honorable G.T. Van Bebber held that defendant owes a duty to defend plaintiff in that lawsuit. Defendant filed an interlocutory appeal. On May 24, 2004, this Court stayed the case until conclusion of the state lawsuit and defendant's appeal. On March 27, 2006, the Tenth Circuit Court of Appeals affirmed Judge Van Bebber's decision. The record does not reflect the status of the state lawsuit against plaintiff. In any event, plaintiff's remaining claims, based on a duty to indemnify, depend on resolution of the pending state lawsuit.<sup>1</sup>

Pursuant to the Declaratory Judgment Act ("DJA"), this Court "[i]n a case of actual controversy within its jurisdiction . . . upon the filing of an appropriate pleading, may declare the rights and other legal

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<sup>1</sup> Judge Van Bebber's order and the Tenth Circuit mandate address Counts 1 and 2 of the Amended Complaint related to the duty to defend. Count 4 seeks a declaratory judgment that defendant must indemnify plaintiff for any judgment in the state lawsuit. Count 3 asserts a claim for breach of the indemnification provisions of the contract.

relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201. Although the Court has jurisdiction under the DJA, it retains discretion to refuse to exercise that jurisdiction and to decline to hear the action. Brillhart v. Excess Ins. Co., 316 U.S. 491, 494 (1942). As noted, the record is devoid of any information regarding the status of the underlying lawsuit. On or before **June 16, 2006**, plaintiff shall show cause why the Court should not exercise its discretion under the DJA and dismiss this matter without prejudice.

Dated this 1st day of June, 2006, at Kansas City, Kansas.

s/ Kathryn H. Vratil  
KATHRYN H. VRATIL  
United States District Judge