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

M. DIANE KOKEN, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of RELIANCE INSURANCE COMPANY,	:	**CIVIL ACTION NO. 1:CV-03-2052**
	:	**(Judge Conner)**
Plaintiff	:	
v.	:	
AMCOMP PREFERRED INSURANCE CO., f/k/a PINNACLE ASSURANCE CORPORATION, et al.,	:	
Defendants	:	

MEMORANDUM

Presently before the court is a motion to remand (Doc. 6) the above-captioned preference action to the Commonwealth Court of Pennsylvania. Plaintiff, M. Diane Koken ("Koken"), contends that the court must remand this case based on the Princess Lida doctrine. See Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456 (1939). The parties have briefed the issues, the court heard oral argument on March 5, 2004, and the motion is now ripe for disposition. For the following reasons, the court will deny the motion.

I. Factual Background[1]

This case, like several others currently pending before the federal and state courts of Pennsylvania,[2] is a preference action pursuant to 40 P.S. § 221.30(a), relating to the liquidation of Reliance Insurance Company ("Reliance"). See Koken v. Reliance Ins. Co., Civil No. 269 M.D. 2001 (Pa. Commw. 2001). Reliance is an insurance company with its principal place of business in Philadelphia, Pennsylvania. (Doc. 1, Complaint ¶ 3). Koken is the Insurance Commissioner of the Commonwealth of Pennsylvania, and sues in her capacity as liquidator of Reliance. Id. ¶ 5. Defendants, AmCOMP Preferred Insurance Company f/k/a Pinnacle Assurance Corporation, AmCOMP Incorporated, and AmCOMP Assurance Corporation (collectively "AmCOMP"), are citizens of the state of Florida. Id. ¶¶ 10, 13-14.

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[1] In accordance with the legal standard for a motion to remand, the court will present the facts as alleged in plaintiff's state court complaint. See infra Part II. The statements contained herein reflect neither the findings of the trier of fact nor the opinion of the court as to reasonableness of plaintiff's allegations.

[2] See, e.g., Koken v. Viad Corp., Civil No. 03-5975, 2004 WL 445150 (E.D. Pa. Mar. 1, 2004); Koken v. P.L.D. Denis, Esq., Civil No. 1:CV-03-2154 (M.D. Pa. Feb. 6, 2004) (remanding case to the Commonwealth Court of Pennsylvania).

Resolution of the instant motion is problematic in that the above cited district court cases arrive at diametrically opposed dispositions of nearly identical motions to remand. There is a dearth of Third Circuit precedent directly on point and the court's research has yielded reasonable authority for adopting the approach of either district court. However, forced to follow one to the exclusion of the other, the court adopts the conclusions embodied in Judge Brody's opinion denying Koken's motion to remand in Koken v. Viad Corp., Civil No. 03-5975, 2004 WL 445150 (E.D. Pa. Mar. 1, 2004).

AmCOMP signed a re-insurance agreement ("Agreement") with Reliance under which Reliance assumed a portion of the risk of certain insurance policies underwritten and issued by AmCOMP. Id. ¶¶ 22-23. In accordance with the Agreement, Reliance made five payments to AmCOMP that are relevant to the instant proceedings: (1) $550,274.00 on June 21, 2000; (2) $408,789.00 on July 14, 2000; (3) $297,018.00 on August 14, 2000; (4) $312,189.00 on September 15, 2000, and (5) $752,578.00 on December 19, 2000. Id. ¶¶ 24-28. Together these payments total $2,320,848.00. Id. ¶ 33.

On May 29, 2001, Koken petitioned the Commonwealth Court of Pennsylvania to place Reliance in statutory rehabilitation pursuant to 40 P.S. § 221.15. Id. ¶ 6. The Commonwealth Court granted Koken's rehabilitation petition. Id. On October 3, 2001, Koken petitioned the Commonwealth Court to place Reliance in liquidation pursuant to 40 P.S. § 221.20. Id. ¶ 8. By order of the same date, the Commonwealth Court granted Koken's petition, terminated the rehabilitation order, and appointed Koken as liquidator of Reliance. Id. The Commonwealth Court has assumed exclusive jurisdiction over the liquidation of Reliance. Id. ¶¶ 1-2 (citing 40 P.S. § 221.30(g); 42 Pa.C.S.A. § 761(a)(3), (b)).

On October 2, 2003, Koken filed the instant preference action in the Commonwealth Court of Pennsylvania to collect the value of the aforementioned payments that Reliance made to AmCOMP under the Agreement. In the complaint, Koken alleges that Reliance was insolvent when it made each of these payments; thus, Koken claims that the payments constitute voidable preferences

pursuant 40 P.S. § 221.30(a). Id. ¶¶ 33-34. On November 12, 2003, AmCOMP removed the case to this court pursuant to 28 U.S.C. §§ 1332, 1441, 1446. (Doc. 1). On December 12, 2003, Koken filed the instant motion to remand. (Doc. 6).

II. Legal Standard

A defendant may remove to the district court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). In the instant case, AmCOMP contends that the court has original jurisdiction based on diversity of citizenship. See 28 U.S.C. § 1332. The district court has diversity jurisdiction if the dispute is between citizens of different states and the amount in controversy exceeds $75,000. Id.

The removing party has the burden of proving the existence of federal jurisdiction. See Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 359 (3d Cir. 1995); Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987); McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936). The district court must remand the case to the state court "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c). In determining whether jurisdiction is proper, the court must review plaintiff's complaint at the time that it was filed in the state court, taking as true all factual allegations contained therein. Steel Valley, 809 F.2d at 1010 (citations omitted).

III. Discussion

It is well settled that once a state court assumes *in rem* or *quasi in rem* jurisdiction over a *res* it may exercise such jurisdiction over the property to the exclusion of all subsequent federal courts otherwise possessing jurisdiction. See Penn Gen. Cas. Co. v. Pennsylvania, 294 U.S. 189, 195 (1935); United States v. Bank of New York & Trust Co., 296 U.S. 463, 477 (1936); Princess Lida, 305 U.S. at 466; Viad, 2004 WL 445150, at *4; Denis, Civil No. 1:CV-03-2154, slip op. at 4. The purpose of this rule, which is known as the Princess Lida doctrine, is to ensure "the harmonious cooperation of federal and state tribunals." Princess Lida, 305 U.S. at 281. The Princess Lida doctrine applies when

> (1) The nature of the litigation in both fora is *in rem* or *quasi in rem*, and (2) the relief sought requires that the second court exercise control over the property in dispute and such property is already under the control of the first court.

Viad, 2004 WL 445150, at *4 (citing Princess Lida, 305 U.S. at 466); Dailey v. Nat'l Hockey League, 987 F.2d 172, 176 (3d Cir. 1993).

Koken challenges the jurisdiction of this court because the Commonwealth Court of Pennsylvania previously assumed exclusive jurisdiction over Reliance's assets as a result of the liquidation order. See Blackhawk Heating & Plumbing Inc. v. Geeslin, 530 F.2d 154, 158 (7th Cir. 1976) (holding that the liquidator's constructive possession of the assets sufficiently places the assets within the control of the state court); cf. Viad, 2004 WL 445150, at *5. Accordingly, this court must determine (1) whether the nature of the instant action is either *in rem* or

quasi in rem and, if so, (2) whether Koken's requested relief would require that the court exercise dominion over a *res* already subject to the exclusive jurisdiction of the Commonwealth Court of Pennsylvania.

To discern whether an action is *in rem*, *quasi in rem*, or *in personam*, the court must identify the object of the lawsuit. See Dreis v. Kelly, 304 F.2d 3, 4 (3d Cir. 1962). As aptly stated by the United States Supreme Court:

> If a court's jurisdiction is based on its authority over the defendant's person, the action and judgment are denominated "in personam" and can impose a personal obligation on the defendant in favor of the plaintiff. If jurisdiction is based on the court's power over property within its territory, the action is called "in rem" or "quasi in rem."

Shaffer v. Heitner, 433 U.S. 186, 199 (1977). "Where the relief sought is a money judgment only, the action is *in personam*." Viad, 2004 WL 445150, at *4 (citing Kline v. Burdke Constr. Co., 260 U.S. 226, 228 (1922)); see also Bank of New York, 296 U.S. at 478.

In support of her assertion that the instant preference action requires the court to exercise *in rem* jurisdiction, Koken advances three potential classifications of the *res* in this action: (1) the liquidation process – *i.e.* "the entire process of marshalling [sic] the assets of this estate so that it can then equitably distribute them to all of Reliance's creditors," see N.T. at 12; (2) the voidable preference right of action under 40 P.S. § 221.30; or (3) the actual $2,320,848.00 that Reliance allegedly paid to AmCOMP. Clearly, the object of the instant matter is neither to determine who has the right to marshal the assets of the liquidation

estate nor to ascertain who enjoys the right to bring the instant preference action. Rather, this is an action in which Koken seeks to recover money, to wit: the alleged $2,320,848.00 voidable preference. (See Doc. 1). Hence, of these potential classifications of the *res*, only the third enjoys even facial merit.

As stated above, this is a preference action pursuant to 40 P.S. § 221.30. When an insurance company in liquidation has made a voidable preference, Section 221.30 creates a statutory cause of action in favor of the liquidator to

> recover *the property or*, if it has been converted, *its value from any person who has received or converted the property*, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him.

40 P.S. § 221.30(a) (emphases added); see also id. § 221.30(k) ("Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (a) shall be personally liable therefor and shall be bound to account to the liquidator."). Thus, a preference action under this provision could potentially be either *in rem* or *in personam*. The resolution of this issue depends on whether the object of the litigation is to establish ownership rights in a defined property or simply to recover value from a certain defendant.

In making this determination, United States v. Bank of New York & Trust Co., 296 U.S. 463, 477 (1936), is instructive. In Bank of New York, several Russian insurance companies doing business in the state of New York became insolvent, prompting the Russian government to "confiscate and appropriate" the

companies' assets. Bank of New York, 296 U.S. at 470. The Russian government then assigned the companies' assets to the United States government. Id.

Meanwhile, a New York state court, apparently without knowledge of the governmental appropriation, assumed *in rem* jurisdiction over certain funds that the insolvent insurance companies had previously deposited with the New York Superintendent of Insurance as a condition of their authority to transact business in New York. Id. These funds were intended for the satisfaction of claims brought against the insolvent Russian insurance companies in state liquidation proceedings. Id.

When the United States discovered the existence of these funds, it filed an action in federal court to recognize its ownership rights in the disputed funds pursuant to the Russian government's assignment. The United States Supreme Court, applying the Princess Lida doctrine, held that:

> [T]hese suits are not to enforce a personal liability, but to obtain possession of the respective funds. The suits are not merely to establish a debt or a right to share in property, and thus to obtain an adjudication which might be had without disturbing the control of the state court. Complainant demands that the depositaries account and pay over to the complainant, *as 'the sole and exclusive owner,' the entire funds in their hands.* Thus the object of the suits is to take the property from the depositaries and from the control of the state court, and to vest the property in the United States to the exclusion of all those whose claims are being adjudicated in the state proceedings.

Id. at 478 (internal citations omitted & emphasis added).

The instant case is factually distinguishable. In contrast to Bank of New York, the complaint in this action simply seeks a judgment against AmCOMP for the value of the alleged preferences. (See Doc. 1, Complaint at 8) (demanding "judgment against [AmCOMP] in the amount of $2,320,848.00 *for the value of the above-described voidable preference payments*, plus costs of suit, interest, and such other relief as the Court deems proper.") (emphasis added); cf. Viad, 2004 WL 445150, at *5 ("The payment received by Viad from Reliance is not a sequestered nor distinguishable piece of property. The $1,974,979.68 the Commissioner seeks, unlike an identifiable piece of property, is fungible."); 40 P.S. § 221.30(a), (k). But see Denis, Civil No. 1:CV-03-2154, slip op. at 5.

Similarly, this action cannot properly be viewed as *quasi in rem* in nature as were the federal actions in Princess Lida and Dailey v. Nat'l Hockey League, 987 F.2d 172, 176077 (3d Cir. 1993). Unlike the instant matter in which Koken seeks to impose personal liability on the defendants pursuant to 40 P.S. § 221.30(a), (k), Princess Lida and Dailey involved claims for the federal court to assume control of and administer certain trust funds. See Princess Lida, 305 U.S. at 466-67; Dailey, 987 F.2d at 176-77. Thus, both actions required that the federal court take control of an identifiable *res* - the respective trust funds - and the object of each was to define the parties' rights in relation to the trusts. See id.; see also Hanson v. Denckla, 357 U.S. 235, 246 (1958) ("A judgment quasi in rem affects the interests of particular persons in designated property.").

The court concludes that the instant action requires the exercise of *in personam* jurisdiction over defendants, not *in rem* or *quasi in rem* jurisdiction over an identifiable *res.* Cf. In re All-Star Ins. Corp., 484 F. Supp. 623, 624 (E.D. Wisc. 1980) ("[A]n action by the liquidator to add to the *res* by collection of a debt owing to the insured is an *in personam* action and need not be brought in the court wherein the liquidation proceeding is pending.") (citations omitted). Thus, the Princess Lida doctrine does not apply and the court will deny the motion to remand.[3] Cf. Viad, 2004 WL 445150, at *4-5.

An appropriate order will issue.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

Dated: March 24, 2004

[3] Because the first requirement for the application of the Princess Lida doctrine is not met, the court need not engage in an exhaustive analysis concerning the second factor. However, the court notes that, as the complaint seeks recovery of a *voidable* preference, the alleged preference payments are not currently part of the liquidation estate and the court's resolution of the instant action would not require the court to exercise dominion over property currently within the exclusive jurisdiction of the Commonwealth Court. See Viad, 2004 WL 445150, at *4-5 (citing Markham v. Allen, 326 U.S. 490, 494 (1946)).

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Plaintiff	:	
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AMCOMP PREFERRED INSURANCE CO., f/k/a PINNACLE ASSURANCE CORPORATION, et al.,	:	
Defendants	:	

ORDER

AND NOW, this 24th day of March, 2004, in accordance with the accompanying memorandum, it is hereby ORDERED that plaintiff's motion to remand (Doc. 6) is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge