

Declaratory Judgment Action Presents Justiciable Controversy

November 2009

The United States District Court for the District of Kansas has held that a declaratory judgment action brought by an insured against several insurers presented a justiciable controversy and was ripe for review. *Sprint Nextel Corp. v. Executive Risk Indem., Inc.*, 2009 WL 2778088 (D. Kan. Sept. 1, 2009). In so holding, the court rejected the insurers' contention that the action failed to present an actual controversy because neither the insured nor the insurers had taken a definitive position regarding coverage under the policies.

The insured was issued twenty directors and officers liability policies by various insurers covering three separate policy periods. In 2003, several securities class action lawsuits were filed against the insured. The insurers disagreed about which policy periods were implicated by the lawsuits, and accordingly all insurers withheld coverage determinations. In 2008, prior to resolution of the underlying lawsuits, the insured filed a declaratory judgment action against the insurers seeking a declaration regarding whether the class actions were covered by the policies. Two of the insurers filed motions to dismiss alleging that no justiciable controversy existed.

The district court first determined that a justiciable controversy existed among the parties. Citing *Kunkel v. Continental Casualty Co.*, 866 F.2d 1269 (10th Cir. 1989), the court held that a justiciable controversy existed because the insured's complaint "call[ed] into question its insurer's rights and obligations." The court rejected the insurers' contention that no actual controversy existed because neither the insured nor insurers had taken a definitive, adversarial position relative to insurance coverage for the underlying lawsuits. According to the court, the insured had taken an adversarial position, namely "that [the insured] is covered by at least one of the policies issued by [the insurers], and this position is contrary to the [insurers'] position that they can disavow coverage." Having determined that a justiciable controversy existed, the court held that prudential considerations weighed in favor of continuing the insured's action, because "no other remedy would more efficiently and effectively resolve this dispute between the parties."