

# FIRREA Precludes Insurer's Declaratory Judgment Action Against D&Os of Failed Bank

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The United States District Court for the Northern District of Georgia has dismissed an insurer's declaratory judgment action against insured directors and officers and the Federal Deposit Insurance Corporation (FDIC), holding that the insurer's proposed amendment of its complaint would not vest the court with subject matter jurisdiction. *OneBeacon Midwest Ins. Co. v. FDIC*, 2014 WL 869286 (N.D. Ga. Mar. 5, 2014). According to the court, even if the FDIC were dropped as a party to the amended complaint, the court nonetheless would lack subject matter jurisdiction over the action pursuant to § 1821(j) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

In 2011, the FDIC, as receiver for an insured bank, sent a letter seeking payment of civil damages to directors and officers of the failed bank. The bank's D&O insurer subsequently filed a declaratory judgment action against the directors and officers and the FDIC seeking declarations that various policy provisions barred coverage for the FDIC's claim. In March 2013, the court granted the D&O defendants' motion to dismiss for lack of subject matter jurisdiction. The court held that a declaratory judgment would affect the FDIC's ability to collect money due to the bank, and therefore the insurer's claims were "precluded by the broad jurisdictional bar of 12 U.S.C. § 1821(j) of [FIRREA]," which provides that "no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver."

Ruling on the insurer's motion for reconsideration and leave to amend, the court held that the insurer's proposed amendment dropping the FDIC as a defendant did not cure the jurisdictional defects. After noting that it is in the court's discretion to grant a motion to amend where amendment will vest the court with jurisdiction, the court held that, "even as amended, Plaintiff's claims affect the FDIC in its exercise of power and trigger the jurisdictional bar of § 1821(j)." According to the court, even if not a party to the action, the "FDIC has an interest (albeit contingent and speculative) in the Policy as a tort claimant." In so holding, the court refused to follow the Northern District of Illinois, which reached the opposite result in *FDIC v. OneBeacon Midwest Insurance Co.*, 2013 WL 951107 (N.D. Ill. Mar. 12, 2013).