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ALERT

Declaratory Judgment Ripe for Adjudication Even Though Retention Not Yet Met

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The United States District Court for the Southern District of Texas refused to dismiss an insurer's declaratory judgment action simply because the applicable policy's self-insured retention had not yet been satisfied. *Darwin Select Ins. Co. v. Laminack, Pirtle & Martines, L.L.P.*, 2011 WL 2174970 (S.D. Tex. June 3, 2011). The insurer sought a declaratory judgment that it had no duty to defend or indemnify the insured for a legal malpractice suit. The insured moved to dismiss, arguing that the insurer's action was not yet ripe since the retention had not been satisfied and there was no significant indication that it would be satisfied. The court denied the motion, noting that Texas law permits a court to issue a declaratory judgment if the duty to defend and the duty to indemnify turn on the same principle and the court concludes as a matter of law that there is no duty to defend. The court found no legal authority suggesting that this result should be different merely because the self-insured retention had not yet been satisfied. The court further noted that the insurer had provided convincing evidence that the underlying suit likely would exhaust the retention. Accordingly, the court concluded that the insurer's declaratory judgment action was of sufficient immediacy and reality to be ripe for adjudication.

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