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ALERT

Federal District Court Declines to Abstain Where Remand of Parallel Action to State Court Was Uncertain

December 1, 2011

The United States District Court for the Southern District of New York has declined to abstain from hearing a declaratory judgment action despite the possibility that a parallel coverage action would be remanded to California state court. *U.S. Specialty Ins. Co. v. Liberty Partners, L.P.*, 2011 WL 5428971 (S.D.N.Y. Nov. 8, 2011). Although agreeing to consider the action, the court struck the insurer's causes of action for unjust enrichment, indemnity, contribution, and breach of contract as redundant of relief the court could grant if the insurer were to prevail in its declaratory judgment action.

The insurer issued a professional and management liability policy to a California insured. The insured defended a lawsuit against it, and the insurer and insured disputed the insurer's defense obligations in connection with that underlying action. Although the insurer contended that it had no obligation to cover any defense costs, it made some payments towards those costs and then filed a declaratory judgment action against the insured in the United States District Court for the Southern District of New York regarding its obligations under the policy (the "New York Action"). Two weeks later, the insured filed an action in California state court for breach of contract and bad faith (the "California Action"), and the insurer then removed the California Action to the United States District Court for the Central District of California.

The insured moved to transfer the New York Action to California and, alternatively, argued that the Southern District of New York should dismiss or stay the New York Action in light of the parallel California Action. The insured also moved to strike the insurer's causes of action

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for unjust enrichment, indemnity, contribution, and breach of contract.

The court first considered the insured's request to transfer venue and concluded that it was appropriate to give deference to the insurer's choice of venue in New York because the policy was negotiated in New York and the insurer received notice of the underlying litigation in New York. While the insured argued that the underlying acts relevant to the coverage dispute and witnesses were located in California, the court determined that the current dispute was a legal issue regarding a New York contract. In addition, the court rejected the insured's argument that the "first-filed" presumption should not apply to give deference to the insurer's choice of venue. In this regard, the court found no evidence that the insurer "purposefully lulled" the insured into thinking the insurer wanted to settle the coverage dispute to delay the insured's filing of a coverage action.

The court next considered whether it would abstain from hearing the declaratory judgment action in favor of the California Action, which was initially filed in state court. The insured argued that the California Action was broader than the New York Action and would adjudicate all claims. In response, the insurer argued that the removal of the California Action to federal court eliminated the premise for abstention. The court noted that a motion to remand was pending in the California Action and, if the California Action were remanded, "principles of abstention would likely favor staying or dismissing the New York Action." However, observing that the hearing on the motion to remand had been continued to a later date, the court decided that it would not dismiss or stay the New York Action because "[l]ife is too short for a perpetual game of staying one action in favor of another[.]"

Finally, the court struck a cause of action in which the insurer advanced theories of unjust enrichment, indemnity, contribution, and breach of contract. The court indicated that the insurer, through these theories, essentially sought restitution of amounts it paid to the insured. The court also noted that it would have broad authority under the Declaratory Judgment Action to award restitution for any overpayments the insurer had made because the insurer had reserved its right to reimbursement of uncovered amounts. The court therefore concluded that the cause of action was redundant of relief the court could grant if the insurer succeeded on its claim for declaratory relief and dismissed those causes of action.