

ALERT

Federal Court Abstains from Hearing Coverage Action Where Underlying State Court Action Sought Declaration of Parties' Rights under Policy

October 3, 2012

The United States District Court for the Southern District of West Virginia, applying *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), has dismissed on abstention grounds a coverage action filed in federal court. *Admiral Ins. Co. v. Fisher*, 2012 WL 4378138 (S.D. W. Va. Sept. 25, 2012).

The estates of two individuals brought separate wrongful death actions in state court against both an individual physician and a corporation he owned and operated. The plaintiffs sought a declaration as to the rights and obligations of the parties under a professional liability policy issued to the corporation. After the state court action was filed, the professional liability carrier filed a declaratory judgment action in federal court naming the physician, the corporation, and both of the underlying plaintiffs. The insurer's suit sought: (1) a determination that the policy it issued to the corporation was void *ab initio*; (2) a judgment rescinding the policy; and (3) reimbursement of its costs and expenses. The insurer contended that the physician had made material misrepresentations and omissions when he applied for the policy while failing to disclose a complaint and a statement of charges filed by a state medical board he had received five months prior. Those documents related to a number of unidentified individuals, allegedly including the two decedents from the underlying wrongful death actions, who had died after taking drugs prescribed by the physician. According to the insurer, the physician knew that his conduct in prescribing medications to the two underlying decedents could have contributed to their deaths and

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could subject him or his corporation to malpractice liability. The underlying plaintiffs filed a motion to dismiss arguing, *inter alia*, that the court should abstain from hearing the insurer's suit because the coverage issue was raised in state court in conjunction with the wrongful death actions. The court agreed and granted the motion to dismiss.

The court first noted that the federal suit included both declaratory and affirmative claims for relief and that, as such, the requests for affirmative relief were governed by the abstention standard as set forth in *Colorado River*. The court then concluded that the state and federal lawsuits were parallel actions inasmuch as the claimants in the underlying wrongful death actions and the insurer in the federal action sought similar declaratory relief regarding coverage for the wrongful death suit.

Applying *Chase Brexton Health Service, Inc. v. Maryland*, 411 F.3d 457 (4th Cir. 2005), the court analyzed six factors to consider whether abstention was warranted. The court found that the second, third, fifth, and sixth factors all favored abstention. The court ruled that the second factor, convenience to the parties, weighed in favor of abstention because the parties would otherwise have to litigate overlapping insurance coverage issues in both courts. The third factor also weighed in favor of abstention, the court found, because the underlying coverage issues turned on proving that the physician committed malpractice, which would be decided in the underlying litigation, and thus abstention would avoid piecemeal litigation. Finally, the court found that the fifth and sixth factors both weighed in favor of abstention because state law supplied the rule of decision on the merits and because the state proceeding was adequate to protect the parties' rights. Weighing all of these factors, the court held that abstention was appropriate.

In its ruling, the court specifically noted that this case was "unlike many insurance declaratory judgment action [s] in which the facts to be resolved to the insurance issue do not encompass the underlying litigation, such as cases in which the insurer denies coverage because the underlying claim is not covered under the terms of the policy or the policy was cancelled prior to the occurrence of the alleged event." The key distinction, the court noted, was that other insurance cases usually could be resolved without any consideration of the underlying claims. In this case, however, the insurer's federal declaratory judgment action was premised on its assertion that the physician had committed malpractice—an assertion that would be litigated in the underlying state court actions.

The opinion is available [here](#).