

THOUGHT LEADERSHIP

News

EL PASO FEDERAL COURT REJECTS EFFORTS TO FORCE INSURER'S COVERAGE ACTION INTO STATE COURT

Newsbrief

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Last Tuesday, a Federal District Court in El Paso held that a coverage suit filed by an insurer could proceed immediately, while the underlying state court liability suit was still pending. In *Canal Ins. Co. v. XMEX Transp., LLC*, EP-13-CV-156-KC, 2014 WL 841554 (W.D. Tex. Mar. 4, 2014), the court denied the defendants' motion to dismiss or abate the federal suit.

The underlying suit involved a single-vehicle accident in which two people were killed. Numerous parties brought suit in state court. Canal Insurance Company, a liability insurer who received demands for defense and indemnity from numerous defendants, brought this separate coverage action in federal court to determine its duty to defend and indemnify the alleged insureds, including its named insured XMEX.

The underlying plaintiffs argued the federal coverage suit should be dismissed in favor of the pre-existing state liability suit, essentially arguing that Canal should intervene in the liability suit and have its coverage issues determined alongside the liability issues. The federal court conducted a textbook analysis of the legal question of whether it should retain jurisdiction or dismiss the case in favor of the earlier-filed state court suit, considering the factors laid out by the Fifth Circuit in *St. Paul Ins. Co. v. Trejo*, 39 F.3d 585 (5th Cir. 1994), and *Sherwin-Williams Co. v. Holmes County*, 343 F.3d 383, 386 (5th Cir. 2003). The court rejected arguments of forum-shopping, noting that filing a suit always involves a degree of forum selection, and the real question is whether the selection is abusive. The court also rejected arguments that the two suits were parallel, noting that Canal was not a party to the underlying suit, and the question of Canal's coverage was distinct from the question of XMEX's liability.

Ultimately, the court elected to retain jurisdiction and allowed the question of Canal's duty to defend to proceed unabated. The court acknowledged that under Texas law, it could not address the indemnity question until the underlying suit was tried or settled, thus fixing the liability of the alleged insureds. Curiously, the court did not overtly address the fact that under Texas law, insurance coverage questions may *not* be injected into a liability suit, and thus it was not legally possible for Canal to resolve its coverage question within the underlying suit, as the underlying plaintiffs urged. The court obliquely hinted at it, suggesting it may have been omitted from the parties' briefing.