

THOUGHT LEADERSHIP

News

SOUTHERN DISTRICT OF TEXAS CLARIFIES “LIVE CONTROVERSY” FOR PURPOSES OF AN INSURER’S DUTY TO DEFEND

Newsbrief

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Last week, the United States District Court for the Southern District of Texas clarified the determination of what constitutes a “live controversy” in light of an insurer’s duty to defend an insured in *Federal Insurance Company v. Northfield Insurance Company v. Bryan C. Wagner, et al.*, No. 4:14-CV-0262, 2018 WL 3122092 (S.D. Tex. Jun. 26, 2018) (slip. op.). The longstanding litigation involves various insurers’ duty to defend or indemnify the Wagner Parties in an underlying state court matter. In state court, ExxonMobil alleged that the Wagner Parties have a contractual duty to defend and indemnify Exxon in two lawsuits in Louisiana relating to “environmental damages” to two properties of which the Wagner Parties purchased the mineral rights from Exxon.

This matter specifically addressed various insurers’ duty to defend and indemnify. Defendant Northfield Insurance Company filed a third-party complaint against other Third-Party Insurers regarding those insurers’ duty to defend and indemnify the Wagner Parties in the underlying state court matter. In a previous order, the court concluded that under the Northfield Policy issued to the Wagners, Northfield had a duty to defend the Wagners in the state court matter. The Third-Party Insurers filed a counterclaim against Northfield and a cross-claim against the Wagners seeking a declaratory judgment that the Third-Party Insurers have no duty to defend or indemnify the Wagners relating to the state suit. Here, the Wagners filed a motion to dismiss the Third-Party Insurers’ cross-claim based on lack of subject jurisdiction as no justiciable controversy exists between the Wagners and the Third-Party Insurers. The Wagners asserted that because they are not seeking defense or indemnity from the Third-Party Insurers and no final judgment was issued in the state suit, the claims are not ripe.

The Court noted in adjudicating a duty to defend, the Fifth Circuit has held that a justiciable controversy can exist between an insurer and its insured regarding a duty to defend so long as an underlying lawsuit for which the insured might seek defense is pending. See *Ironshore Specialty Ins. Co. v. Tractor Supply Co.*, 624 F. App’x 159, 163 (5th Cir. 2015). Accordingly, because: (1) the Wagners have a contingent right to defense from Northfield (based on the ongoing state suit); (2) the Wagners refuse to abandon claims for defense costs against the Third-Party Insurers; (3) the issue of what rights the Wagners have from the Third-Party insurers is still ripe; and (4) the court has substantial discretion to decide or dismiss the action; the court concluded that a live controversy exists and denied the Wagners’ motion.

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Addressing the Wagners’ dismissal of the Third-Party Insurers’ cross-claims for declaratory judgment that the insurers have no duty to indemnify, the Court reiterated that indemnification is determined by the facts established in the underlying suit and because no final judgment was entered in the state suit, the determination was not ripe. Accordingly, the Court stayed the Third-Party Insurers’ cross-claim.