

The Movement Towards Increased Federal Jurisdiction by Christopher Tellner Esq. and Gregory Brown, Esq., published in The Legal Intelligencer, 8-23-2023

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In the U.S. Court of Appeals for the Third Circuit, district courts exercising their discretion under the DJA are guided by the landmark opinion in *Reifer v. Westport Insurance*, 751 F.3d 129 (3d Cir. 2014). *Reifer* sets forth the factors a district court must address when deciding whether to abstain from hearing an insurance coverage declaratory judgment action.

Insurance carriers typically prefer a federal court to decide their insurance coverage declaratory judgment actions. The federal bench's well-known facility with insurance law and the relative uniformity of federal procedure are among the reasons carriers regard a federal forum as more appealing than state court. As a result, a carrier often brings a declaratory judgment action in federal court to determine its obligation to defend and indemnify a defendant in an action pending in state court. In that circumstance, the federal Declaratory Judgment Act (DJA) provides an exception to the general rule that federal courts have a strict duty to exercise the jurisdiction conferred on them by Congress. Specifically, the DJA grants federal courts broad discretion in deciding whether to abstain from hearing the action or remanding it to state court. While the discretion granted under the DJA is substantial, it is not unlimited. In the words of the U.S. Supreme Court, it is "bounded and reviewable."

In the U.S. Court of Appeals for the Third Circuit, district courts exercising their discretion under the DJA are guided by the landmark opinion in 751 F.3d 129 (3d Cir. 2014). sets forth the factors a district court must address when deciding whether to abstain from hearing an insurance coverage declaratory judgment action. In practice, the district courts' implementation of the *Reifer* factors was uneven, with the Third Circuit repeatedly returning to the issue to provide additional guidance. In each instance, the appellate court's review resulted in the retention of jurisdiction, and signaled that a decision to abstain must be carefully and thoroughly considered. As a result, Third Circuit district courts appear to be less likely to abstain from hearing insurance declaratory judgment actions in recent years. For courts considering abstention in an insurance declaratory judgment action, 's first instruction is to determine whether there is a "parallel state proceeding" to the federal action.

This instruction arises from the U.S. Supreme Court decision in 424 U.S. 800 (1976). Parallel proceedings involve the "same issues, not governed by federal law, between the same parties." counseled that the presence of a parallel proceeding "militates significantly" for abstention and, inversely, against abstention in its absence. And to be sure, the underlying lawsuit for which an insured seeks coverage is not a parallel proceeding, despite contrary arguments advanced by insureds.

However, the existence or nonexistence of a parallel state proceeding it is not dispositive. To enable courts to thoroughly analyze whether abstention is appropriate, mandates that a district court consider several additional factors to determine whether they collectively outweigh the existence or nonexistence of a parallel proceeding. **PLEASE CLICK "READ MORE" FOR FULL ARTICLE.**

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