Understanding and Applying Diverging Standards

Federal Jurisdiction in Declaratory Judgment Actions Involving Insurance

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Diverging standards have developed across the country, which may lead to varying outcomes, depending on the jurisdiction.

In insurance coverage disputes, insurers and insureds alike commonly seek declaratory relief regarding an insurer's coverage obligations. A liability insurer, for example, may defend an underlying third-party action under a reservation of rights, while concurrently pursuing a declaratory judgment in a separate action to determine whether the insurer owes a duty to defend or indemnify. Alternatively, an insurer may deny coverage altogether, and the insured may file suit, seeking a declaration that the policy at issue affords coverage. Some of these actions seek declaratory relief only, while others include claims for monetary damages, typically for breach of contract and bad faith.

For a variety of strategic reasons, insurers frequently prefer to initiate coverage actions in federal court or to remove these actions from state court to federal court when appropriate. Maintaining a declaratory judgment action in federal court, however, is no simple task; a federal court's jurisdiction under the federal Declaratory Judgment Act is discretionary rather than mandatory. Even if all requirements for federal subject matter jurisdiction are met—*e.g.*, complete diversity and an amount in controversy exceeding $75,000—a federal court may, on its own, or based on a challenge by motion, dismiss or stay the action, or remand it to state court.

Evaluating a federal court's discretionary jurisdiction over a declaratory judgment action has become a complicated task that hinges on two details: first, it hinges on the nature of the action—specifically whether the action asserts claims for declaratory relief only or also includes claims for monetary damages; and second, it hinges on certain balancing factors and legal standards that the court may apply to determine whether exercising jurisdiction is appropriate. Different courts weigh different factors in evaluating discretionary jurisdiction for pure declaratory judg-

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ment actions. Moreover, a split of authority has developed among the circuits over the standard that district courts should follow if a declaratory judgment action includes breach of contract or other claims over which the court's jurisdiction otherwise would be mandatory. Understanding the legal standards, and the circumstances under which a federal district court may or may not be inclined to exercise its jurisdiction, is crucial to evaluating whether to pursue a matter in federal court.

Federal Declaratory Judgment Act

The federal Declaratory Judgment Act (DJA), 28 U.S.C. §§2201 and 2202, provides a unique and powerful remedy in federal district court, but only if jurisdiction is proper and the court is willing to exercise it. Under the DJA, "any court of the United States… *may* declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. §2201(a) (emphasis added). As the Supreme Court explains:

> Prior to the [DJA], a federal court would entertain a suit on a contract only if the plaintiff asked for an immediately enforceable remedy like money damages or an injunction…. The [DJA] allowed relief to be given by way of recognizing the plaintiff's right even though no immediate enforcement of it was asked." *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671–72 (1950).

Critically, "the Declaratory Judgment Act is not an independent source of federal jurisdiction." *Schilling v. Rogers*, 363 U.S. 666, 677 (1960) (citing *Skelly Oil*, 339 U.S. at 671). Rather, it provides a federal remedy that may be invoked when jurisdiction otherwise properly exists. *Skelly Oil*, 339 U.S. at 671–72. However, because of its discretionary nature, even when a federal court has original jurisdiction, such as through diversity, a district court may in certain circumstances decline to take jurisdiction in a declaratory judgment action.

Discretionary Jurisdiction and Abstention

In *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942), the Supreme Court first recognized that the jurisdiction conferred by the Declaratory Judgment Act is discretionary and that district courts are not obligated to exercise jurisdiction in declaratory judgment actions. It announced that "[a]lthough the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act, it was under no compulsion to exercise that jurisdiction." *Id.* at 494. *Brillhart* involved a controversy between the parties that could have been fully adjudicated in another matter pending in a state court. The Court stated:

> Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided.

Id. at 495.

When a state court proceeding is pending, district courts must analyze whether the controversy in the federal action would "better be settled in the proceeding pending in the state court," and in doing so, they should consider, among other things, the scope of the pending state action, the defenses raised in that action, and whether the claims of all parties could be adjudicated there. *Id.* However, the U.S. Supreme Court expressly declined to identify a comprehensive list of relevant factors that a district court may consider when deciding whether to exercise its discretionary jurisdiction under the DJA, deferring to the circuit and district courts to develop these standards. *Id.*

Over 30 years later, in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), the Supreme Court again addressed the scope of a district court's discretion to decline jurisdiction over a matter otherwise within a federal court's original jurisdiction. There, in a case arising under federal claims over water rights that did not include a declaratory judgment claim, the Court proclaimed that federal courts have a "virtually unflagging obligation" to exercise the jurisdiction bestowed upon them by Congress. *Id.* at 817. The Court explained that the abstention doctrine was an "extraordinary and narrow" exception to this "unflagging obligation" and held that a district court may decline to exercise jurisdiction over a case properly before it in only three general circumstances: (1) "in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law"; (2) "where there have been presented difficult questions of state law bearing policy problems of substantial public import whose importance transcends the result in the case then at bar"; and (3) "where, absent bad faith, harassment, or patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, state nuisance proceedings antecedent to a criminal prosecution, which are directed at obtaining closure of places exhibiting obscene films, or collection of state taxes." *Id.* at 813–16 (citations omitted). The Court also noted that other grounds for declining jurisdiction may exist in certain "exceptional" circumstances involving concurrent jurisdiction, either by federal courts, or by state and federal courts, to avoid duplicative litigation—citing a nonexhaustive list of factors, including (1) inconvenience of the federal forum; (2) desirability to avoid piecemeal litigation; and (3) the order in which jurisdiction was obtained by the concurrent forums. *Id.* at 817–18.

Understanding the legal standards, and the circumstances under which a federal district court may or may not be inclined to exercise its jurisdiction, is crucial to evaluating whether to pursue a matter in federal court.

Colorado River did not address declaratory judgment claims, but some courts subsequently applied it in exercising their

discretion to decline jurisdiction over declaratory judgment claims. *See, e.g.*, *Terra Nova Ins. Co., Ltd. v. 900 Bar, Inc.*, 887 F.2d 1213, 1221 (3d Cir. 1989) (listing cases applying it); *Lumbermens Mut. Cas. Co. v. Connecticut Bank & Trust Co., N.A.*, 806 F.2d 411, 413–14 (2d Cir. 1986) (same). This created confusion regarding whether the "exceptional" circumstances to decline jurisdiction set forth in *Colorado River* governed discretionary jurisdiction under the DJA. Because of this confusion, the Supreme Court revisited DJA discretionary jurisdiction in *Wilton v. Seven Falls*, 515 U.S. 277 (1995).

In cases seeking only declaratory relief, many of the circuits have developed extensive, multifactor balancing tests that the district courts must apply in determining whether to exercise discretionary DJA jurisdiction.

In *Wilton*, the Supreme Court held that the "exceptional circumstances" test of *Colorado River*, which was decided outside of the context of the DJA, does not govern a district court's decision to decline or stay a declaratory judgment action in favor of a parallel state action. Rather, the distinct features of the DJA—namely, the statute's use of the permissive language "may" and its historical characterization as "an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant"—mandates a standard giving district courts greater discretion in actions under the DJA than permitted under the *Colorado River* "exceptional circumstances" test. *Id.* at 286–87. *Brillhart* applies to actions under the Declaratory Judgment Act for which a parallel state action exists. *Id.* The Court noted that a district court's decision to exercise or to decline discretionary jurisdiction is subject to an abuse of discretion standard, and the proper application of that standard provides appropriate guidance to district courts going forward. *Id.* at 289. Notably, the Court expressly declined to define "the outer boundaries" of the district court's discretion in other cases, such as those that do not involve "parallel state proceedings." *Id.* at 290.

Still, *Brillhart, Colorado River*, and *Wilton* left many questions unanswered. May a district court decline jurisdiction under the DJA when there are no parallel state proceedings? What specific considerations govern a district court's exercise of discretion? May a district court decline to exercise jurisdiction in a case that includes both declaratory and nondeclaratory (often referred to as "legal" or "coercive") claims? Federal circuit and district courts have struggled to answer these questions clearly since *Wilton* and have developed diverging standards to determine whether asserting jurisdiction is appropriate.

Two general scenarios exist: (1) actions seeking declaratory relief only; and (2) mixed-relief claims—*i.e.,* actions seeking both declaratory and nondeclaratory relief. The legal standards that courts apply in each scenario can vary significantly by jurisdiction.

Claim for Declaratory Relief Only

In cases seeking only declaratory relief, many of the circuits have developed extensive, multifactor balancing tests that the district courts must apply in determining whether to exercise discretionary DJA jurisdiction. In the Fourth and Eighth Circuits, for example, district courts must consider the following: (1) whether declaratory relief "will serve a useful purpose in clarifying and settling the legal relations in issue"; (2) whether such relief "will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding"; (3) "the strength of the state's interest in having the issues raised in the federal declaratory judgment action decided in state courts"; (4) "whether the issues raised in the federal action can more efficiently be resolved in the court in which the state action is pending"; (5) "whether permitting the federal action to go forward would result in unnecessary 'entanglement' between the federal and state court systems because of the presence of overlapping issues of fact or law"; and (6) "whether the declaratory judgment action is being used merely as a device for 'procedural fencing'—that is, 'to provide another forum in the race for *res judicata*' or 'to achieve a federal hearing in a case otherwise not removable.'" *Aetna Cas. & Sur. Co. v. IndCom Elec. Co.*, 139 F.3d 419, 422 (4th Cir. 1998) (internal citations omitted). *See also Scottsdale Ins. Co. v. Detco Indus., Inc.*, 426 F.3d 994, 998 (8th Cir. 2005) (adopting the Fourth Circuit's test).

In the Fifth Circuit, district courts balance the following factors:

> (1) whether there is a pending state action in which all of the matters in controversy may be fully litigated; (2) whether the plaintiff filed suit in anticipation of a lawsuit filed by the defendant; (3) whether the plaintiff engaged in forum shopping in bringing the suit; (4) whether possible inequities in allowing the declaratory plaintiff to gain precedence in time or to change forums exists; (5) whether the federal court is a convenient forum for the parties and witnesses; (6) whether retaining the lawsuit would serve the purposes of judicial economy; and (7) whether the federal court is being called on to construe a state judicial decree involving the same parties and entered by the court before whom the parallel state suit between the parties is pending.

Sherwin–Williams Co. v. Holmes Cnty., 343 F.3d 383, 388 (5th Cir. 2003).

As another example, the Third Circuit requires district courts to give "meaningful consideration" to the following factors, to the extent that they are relevant:

> (1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy; (2) the convenience of the parties; (3) the public interest in settlement of the uncertainty of obligation; (4) the availability and relative convenience of other remedies; (5) a general policy of restraint when the same issues are pending in a state court; (6) avoidance of duplicative litigation; (7) prevention of the use of the declaratory action as a method of

procedural fencing or as a means to provide another forum in a race for *res judicata*; and (8) (in the insurance context), an inherent conflict of interest between an insurer's duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion.

Reifer v. Westport Ins. Corp., 751 F.3d 129, 146 (3d Cir. 2014).

Other circuits have adopted similar tests containing overlapping factors to weigh in balancing competing state and federal interests. *See, e.g.*, *Nationwide Ins. v. Zavalis*, 52 F.3d 689, 692 (7th Cir. 1995) (requiring district courts to weigh four factors); *State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979, 983 (10th Cir. 1994) (applying a five-factor balancing test); *Government Emples. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 n.5 (9th Cir. 1998) (applying a six-factor balancing test).

These factors are nonexhaustive, and certain factors may be emphasized or given more weight, depending on the circumstances of a particular case. The Third Circuit, for example, has stated that certain considerations may be of particular relevance in the insurance context:

(1) A general policy of restraint when the same issues are pending in state court; (2) An inherent conflict of interest between an insurer's duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion; (3) Avoidance of duplicative litigation.

Reifer, 751 F.3d at 140 (quoting *State Auto Ins. Cos. v. Summy*, 234 F.3d 131, 134 (3d Cir. 2000)).

In most circuits, courts consistently have given two factors the most weight in determining whether to exercise discretionary Declaratory Judgments Act jurisdiction: (1) whether there is a pending parallel state action; and (2) whether the applicable state law is uncertain or undetermined. Litigants should, therefore, pay particular attention to these factors when advocating that a district court exercise or decline discretionary DJA jurisdiction.

Pending Parallel Action

The most significant factor that district courts consider to determine whether to decline or to exercise jurisdiction under the Declaratory Judgment Act is whether a parallel action is pending in a state court. The existence of a pending parallel action does not require a district court to decline jurisdiction under the DJA. Likewise, the absence of a pending parallel action does not require a district court to exercise jurisdiction. *See, e.g., Reifer*, 751 F.3d at 144. The Supreme Court in *Wilton* declined to address whether a court may decline DJA jurisdiction when there are no parallel state proceedings, *Wilton*, 515 U.S. at 290, leaving it an open issue.

Courts in some circuits have held that the existence or absence of a pending parallel action creates a presumption in favor of declining jurisdiction if a parallel action exists, or of exercising it if a parallel action does not exist. *See, e.g., Dizol*, 133 F.3d at 1225. Other courts have held that the absence of a parallel state proceeding is merely one factor upon which courts have placed increased emphasis. *See, e.g., Scottsdale Ins. Co.*, 426 F.3d at 997-98; *Sherwin-Williams Co.*, 343 F.3d at 388; *Ind. Com. Elec. Co.*, 139 F.3d at 423. The result is largely the same; the presence or the absence of a parallel proceeding will influence a federal court's decision to exercise jurisdiction.

Despite being the most heavily weighted factor, what constitutes a parallel action is not well settled. Some district courts hold that an action is parallel simply when "substantially the same parties are litigating substantially the same issues in another forum." *See, e.g., Tyrer v. City of S. Beloit, Il.*, 456 F.3d 744, 752 (7th Cir. 2006). Other courts generally require that for an action to be parallel, it must be pending as of the date of the filing of the federal action, and the two actions must arise from the same factual circumstances. *See, e.g., Great Am. Assur. Co. v. Discovery Prop. & Cas. Ins. Co.*, 779 F. Supp. 2d 1158, 1163 (D. Mont. 2011). The U.S. Supreme Court has opined that a parallel proceeding is, at a minimum, one "in which all the matters in controversy between the parties could be fully adjudicated." *Brillhart*, 316 U.S. at 494–95. This is a very general standard, and accordingly, much depends on how a district court will view a parallel action in a particular jurisdiction.

In the insurance context, there are compelling arguments that an underlying tort action generally is not sufficient to constitute a pending parallel action to a suit seeking a declaration of an insurer's duty to defend. A liability insurer, for example, may prudently appoint defense counsel to defend its insured in an underlying action even when coverage is unclear. Depending on the jurisdiction and the policy language, such an insurer typically cannot recover the costs of defending an insured, even if it defended under a reservation of rights. While the underlying action is ongoing, the insurer may seek a declaration in a separate action regarding its duty to defend or indemnify. If the declaratory judgment action is stayed or dismissed until the underlying action concludes, the insurer effectively loses its ability to seek a determination with respect to its duty to defend. The underlying tort action, to which the insurer is not a party, should not be considered parallel under these circumstances.

The U.S. Court of Appeals for the Third Circuit recently resolved a split among federal district courts in the Third Circuit over this issue. *See Kelly v. Maxum Specialty Ins. Grp.*, No. 15-3618, 2017 U.S. App. LEXIS 15824 (3d Cir. Aug. 21, 2017). In *Kelly*, the court rejected the standard that an action is parallel merely where there is a *potential* that the federal claims may be satisfactorily adjudicated in state court. *Id.* at *10. The court held, rather, that "there must be a substantial similarity in issues and parties between contemporaneously pending proceedings." *Id.* at *11. Because (i) the insurer was not a party to the underlying tort action and (ii) the pending issues of tort liability in that action were distinct from the insurance coverage issues in the declaratory judgment action, the two actions were not parallel. *Id.* at *15–16.

Uncertain or Undetermined State Law

Courts generally cannot dismiss or remand a declaratory judgment action simply because it does not involve a question of federal law. *See Vulcan Materials Co. v. City of Tehuacana*, 238 F.3d 382, 390 (5th Cir. 2001). In fact, most coverage disputes require the application of state substantive law.

Federal district courts, however, are generally reluctant to exercise discretionary jurisdiction if the declaratory judgment action presents legal issues that

are unsettled and they would require the federal court to predict how the state's highest court would rule. This factor was controlling in the Third Circuit's decision in *Reifer*. *See Reifer*, 751 F.3d at 148. The Third Circuit explained: "Where the state law is uncertain or undetermined, the proper relationship between federal and state courts requires district courts to 'step back' and be 'particularly reluctant' to exercise DJA jurisdiction." *Id*. At issue in *Reifer* was an insured's argument that the insurer could not preclude coverage based on late notice absent a showing of prejudice, notwithstanding that the insurance policy at issue was a claims-made policy. The insurer offered two arguments: (1) the case presented only a straightforward issue of whether an insurer must prove prejudice before declining coverage under a claims-made policy, and (2) Pennsylvania courts have unanimously held that insurance companies need not show prejudice prior to denying coverage under claims-made policies. *Id*. at 148–49.

The court rejected the insurer's arguments, based on the circumstances of the underlying action, which involved a legal malpractice claim and implicated "the policies underlying Pennsylvania's rules governing attorney conduct, which are promulgated by the Pennsylvania Supreme Court." *Id*. at 149. Although observing that federal courts are "perfectly capable of applying state law," the plaintiff in *Reifer* made "a nonfrivolous argument for possibly carving an exception to governing Pennsylvania law in the context of legal malpractice insurance contracts." *Id*. Based primarily on this factor, the Third Circuit held that the district court did not abuse its discretion in declining discretionary jurisdiction. *Id*.

Claims for Declaratory and Legal Relief

Difficulties arise when an action includes both claims for declaratory relief, which fall within the discretionary jurisdiction of the district court, and claims for nondeclaratory relief (*i.e*., legal or coercive relief), such as breach of contract or bad faith, over which the district court must keep jurisdiction except in the *Colorado River* "exceptional circumstances." Courts have struggled with the appropriate analysis in these mixed-relief cases, but three separate approaches have developed.

Bright-Line Test

The Second, Fourth, and Fifth Circuits have adopted a bright-line test, which holds that when an action contains *any* claim for legal relief, the district court must exercise its jurisdiction over the matter even if it also contains a declaratory claim. *See Village of Westfield v. Welch's*, 170 F.3d 116 (2d 1999); *VonRosenberg v. Lawrence*, 781 F.3d 731 (4th Cir. 2015); *New England v. Barnett*, 561 F.3d 392 (5th Cir. 2009). Under this bright-line test, district courts do not have discretion to decline jurisdiction following *Wilton* and *Brillhart* principles, and instead, they may decline jurisdiction only if the "exceptional circumstances" to abstain set forth in *Colorado River* exist. These courts generally reason that the "unflagging obligation" to exercise jurisdiction over such claims as set forth in *Colorado River* supersedes any discretion to decline jurisdiction over a declaratory judgment cause of action.

This strict bright-line test has been praised by courts and litigants for its ease of application. It has been criticized, however, because it eliminates a district court's substantial discretion to decline jurisdiction in favor of the exceedingly narrow *Colorado River* doctrine. *See R.R. St. & Co., Inc. v. Vulcan Materials Co*., 569 F.3d 711, 716 (7th Cir. 2009) (discussing pros and cons of the bright-line test).

Independent Claim Test

The Third, Seventh, and Ninth Circuits have adopted a slightly less rigid "independent claim" test, "which balances the court's duty to hear legal claims with its discretion to decline jurisdiction over claims for declaratory relief." *Rarick v. Federated Serv. Ins. Co*., 852 F.3d 223, 228 (3d Cir. 2017). *See also Vulcan Materials Co.*, 569 F.3d at 716–17; *United Nat'l Ins. Co. v. R&D Latex Corp*., 242 F.3d 1102, 1113 (9th Cir. 2001). The Third Circuit in *Rarick* recently described this test as follows:

> Under this test, the district court first determines whether claims seeking legal relief are independent of claims for declaratory relief. Non-declaratory claims are "independent" of a declaratory claim when they are alone sufficient to invoke the court's subject matter jurisdiction and can be adjudicated without the requested declaratory relief. If the legal claims are dependent on the declaratory claims, the court may decline jurisdiction over the entire action. But if they are independent, the court must adjudicate the legal claims unless there are exceptional circumstances as described in *Colorado River*. When the legal claims are independent, courts generally will not decline the declaratory judgment action in order to avoid piecemeal litigation. Where the legal claims are not independent, the district court has discretion under *Wilton/Brillhart* to abstain from hearing the entire action.

Rarick, 852 F.3d at 228 (internal quotes and citations omitted).

The motivation underlying the "independent claim" test is to preclude forum shopping so that plaintiffs cannot evade federal jurisdiction by artfully pleading declaratory judgment claims when they are unnecessary to achieve the relief sought. Concerns for judicial economy and for avoiding piecemeal litigation also underlie this test. *Id*. at 229–30.

In practice, the "independent claim" test will almost always result in a district court exercising jurisdiction when both declaratory and legal relief is sought. This is because nondeclaratory claims, such as claims for breach of contract or bad faith, even if they are based on the same legal obligation as the declaratory judgment claim (*e.g*., the same coverage determination), are rarely dependent on the declaratory judgment claim. That is, they can be decided standing on their own by a federal court without the requested declaratory relief in the case.

For instance, in *Vulcan Materials*, an insurer, as subrogee of its insured, asserted claims for breach of contract, common law indemnity, and promissory estoppel, seeking monetary damages for "Vulcan's refusal to defend and indemnify the insured in the underlying lawsuits." *Vulcan Materials*, 569 F.3d at 713–14. The insurer also asserted a claim for declaratory relief, seeking a declaration that Vulcan owed a duty to defend and indemnify the insured in the underlying lawsuits. *Id*. at 714. The Seventh

Circuit, applying the "independent claim" test, held that the district court was without discretion under *Wilton/Brillhart* to dismiss the nondeclaratory claims because in the event that the declaratory claim was dropped from the case, the court would still have subject matter jurisdiction over the claims seeking monetary relief. *Id.* at 717. In so holding, the court noted, "Even if the legal issues involved in deciding the declaratory claim would be dispositive of all of the non-declaratory claims, that would not necessarily mean that the latter are not independent of the former." *Id.* at 717 n.9. The Seventh Circuit explained: "Put simply, the non-declaratory claims are independent of the declaratory claim because they could stand alone in federal court—both jurisdictionally and substantively—irrespective of the declaratory claim." *Id.* at 717.

"Heart of the Matter" Test

The Eighth Circuit, and some district courts in circuits that remain unsettled, have adopted a "heart of the matter" or "essence of the lawsuit" test under which the court examines the nature of the claims and determines whether declaratory relief is the essence of the suit. If the "essence" is declaratory rather than nondeclaratory relief—that is, if the outcome of the coercive claim hinges on the outcome of the declaratory claim—a district court may decline to exercise jurisdiction over the entire action in accordance with *Wilton* and *Brillhart*. If, however, the essence is nondeclaratory relief, the *Colorado River* standard controls. *See Royal Indem. Co. v. Apex Oil Co.*, 511 F.3d 788 (8th Cir. 2008); *Lexington Ins. Co. v. Rolison*, 434 F. Supp. 2d 1228, 1235 (S.D. Ala. 2006); *Principal Life Ins. Co. v. Doctors Vision Ctr. I, PLLC*, No. 5:12-cv-00125-JHM-LLK, 2013 U.S. Dist. Lexis 54733 (W.D. Ky. Apr. 15, 2013). This "heart of the matter" test offers district courts the widest latitude of discretion to accept or to deny jurisdiction over mixed-claim cases.

In practice, courts following the more flexible "heart of the matter" approach generally find the "heart" or "essence" of insurance-related claims to be declaratory, and thus, they find that they have discretion to dismiss (or to stay) both the declaratory and the nondeclaratory claims. For example, in *Rolison*, an insurer filed suit in federal court seeking a declaration of rights and obligations under a general liability policy for an underlying state action involving a fatal auto accident. *Rolison*, 434 F. Supp. 2d at 1230–31. The insured counterclaimed for breach of contract and bad faith, seeking monetary relief. *Id.* at 1232. Meanwhile, an employee of the insured filed a separate action against the insurer in state court, alleging breach of contract and bad faith for failure to settle the underlying action. *Id.* at 1231. The employee filed a motion to dismiss or abstain from deciding the federal action in favor of the state court action. *Id.* at 1232. Applying the "heart of the matter" test, the court held that the coercive counterclaims "hinged" on the declaratory judgment claim, thereby requiring the multifactor analysis for declaratory-only claims under *Wilton* to apply. *Id.* at 1238. After applying those factors, the court declined to exercise jurisdiction and dismissed the case in favor of the pending state court action. *Id.* at 1243–46.

The "heart of the matter" test has been praised for "its flexibility as it allows district courts to treat different cases differently based on the fundamental character of a particular action." *Rolison*, 434 F. Supp. 2d at 1237–38. It has been criticized, however, for enabling plaintiffs to evade federal subject matter jurisdiction through artful pleading and for avoiding *Colorado River's* "virtually unflagging obligation" to exercise jurisdiction conferred by Congress. *Rarick*, 852 F.3d at 229–30.

Conclusion

As illustrated above, determining whether a declaratory judgment action will be litigated in federal court rather than state court may be challenging. The end result will turn on a number of considerations, including, among many others, whether the action asserts claims for declaratory relief only, or also includes coercive claims; whether there is a parallel state action; and whether the action addresses unsettled areas of state law that may be better suited for resolution by a state court. Counsel should be particularly mindful of the federal circuit in which their declaratory judgment action may be venued because diverging standards have developed across the country, which may lead to varying outcomes. Understanding these different standards and applying them to the facts of the case should enable counsel to assess whether a declaratory judgment action will remain in federal court. FD