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DECLARATORY JUDGMENTS

The recent case of Higgins v. State Farm Fire & Casualty Co., 29 Fla. L. Weekly S533 (Fla. Sept. 30, 2004) makes a substantial change in the way declaratory judgment actions involving indemnity insurance policies are handled.

The underlying case, which resulted in the Court's jurisdiction, was State Farm Fire & Casualty Co. v. Higgins, 788 So. 2d 992 (Fla. 4th DCA 2001). In that case, Judge Gross, speaking for an en banc Fourth District, addressed three issues concerning declaratory judgment. The first related to an insurer's duty to defend. The second related to whether a declaratory judgment action could properly decide the insurer's duty to indemnify if factual decisions had to be reached in the declaratory judgment action. Lastly, the District Court addressed the question of whether the declaratory judgment action could precede the trial of the underlying tort claim.

The leading case on the issue of an insurer's obligation to defend is National Union Fire Insurance Co. v. Lenox Liquors, Inc., 358 So.2d 533 (Fla. 1977). In that case, the Supreme Court adopted the principal that the allegations of the complaint determine the responsibility of the insurer to defend. In Higgins, the Supreme Court reaffirmed that law and adopted the explanation of that principle in Baron Oil Co. v. Nationwide Mutual Insurance Co., 470 So. 2d 810 (Fla. 1st DCA 1985). The Supreme Court approved the conclusion of the Fourth District that a directed verdict should have been granted to the insured on that

issue since the ultimate amended complaint alleged only negligence and not any intentional act. The Court concluded that once a complaint is filed the sole determining factor on the insured's duty to defend is the four corners of the complaint.

On the issue of the utilization of a declaratory judgment in a case where no complaint has been filed or where there exists an issue on the duty to indemnify the insured relative to a policy defense, the landmark case has long been Columbia Casualty Co. v. Zimmerman, 62 So. 2d 338 (Fla. 1952). There the Supreme Court held that a declaratory judgment action could only be brought to determine an ambiguous provision in a policy and where the policy itself was plain and unambiguous, a declaratory action could not be utilized to determine a factual issue. Declaratory judgments, according to Columbia Casualty, were limited to interpretations of the policy only. In the underlying Fourth District case, the Court concluded that Columbia Casualty was unduly restrictive and that factual determinations can and should be made in declaratory judgment actions to determine policy defenses. The Supreme Court agreed. At 534, the Court held:

The question certified by the Fourth District is:

MAY THE INSURER PURSUE A DECLARATORY ACTION IN ORDER TO HAVE DECLARED ITS OBLIGATION UNDER AN UNAMBIGUOUS POLICY EVEN IF THE COURT MUST DETERMINE THE EXISTENCE OR NONEXISTENCE OF A FACT IN ORDER TO DETERMINE THE INSURER'S RESPONSIBILITY?

This question presents the issue of whether chapter

86, Florida Statutes (2003), Florida's declaratory judgment statute, authorizes declaratory judgments as to insurance policy obligations to defend and coverage for indemnity when it is necessary to decide issues of fact in order to determine the declaratory judgment. We conclude that the declaratory judgments statutes do authorize a declaratory judgment action to decide these issues. We recede from *Columbia Casualty Co. v. Zimmerman*, 62 So. 2d 338 (Fla. 1952), and the cases which relied upon it to the extent that the *Columbia Casualty* decision is in conflict with our answer to the certified question.

The Court's conclusion that factual determinations could be made in a declaratory judgment action follows an analysis of the statutory and case law. From a public policy standpoint, the Court concludes that an insured should not be put in the position of facing a substantial judgment without knowing whether or not there is going to be coverage from an insurance policy. By the same token, the Court concluded, an insurer should not be put in the position of either paying a claim when no coverage exists or, alternatively, being put in jeopardy of a bad faith action for failure to pay the claim if coverage is eventually found to exist.

On the issue of whether a declaratory judgment can be tried before or after the underlying tort action, the Court again agreed with the Fourth District's conclusion that this should rest in the discretion of the trial court. The trial court must wrestle with the alternative issues of unfairly delaying the plaintiff's claim and the cost to the insurer for providing a defense in a case where there may not ultimately be coverage. The trial court must also consider whether a decision as

to the insurance question will or will not promote settlement and avoid collusion between a claimant and an insured to create coverage where none exists.

This case makes a sea change to the way declaratory judgment actions on questions of indemnity coverage are handled.

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