

The Evolution of Ripeness Affords Additional Opportunities for Declaratory Judgment Actions

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In Colony Insurance Company v. Hucks Pool Company, Inc., et al. (February 15, 2018), based only upon a demand letter to Hucks from a claimant, Colony filed a declaratory judgment action that sought a determination whether it had the duty to defend and indemnify under a policy issued to Hucks.

In Colony Insurance Company v. Hucks Pool Company, Inc., et al. (February 15, 2018), based only upon a demand letter to Hucks from a claimant, Colony filed a declaratory judgment action that sought a determination whether it had the duty to defend and indemnify under a policy issued to Hucks. Hucks moved to dismiss the action, alleging the matter was not ripe because no complaint had been filed.

Generally, in South Carolina, an insurer's duty to defend has been determined by the allegations of the underlying complaint. Consequently, the court has previously held with no underlying complaint, it could not compare the allegations of the complaint to the policy to determine whether the insured had a duty to defend and, therefore, the matter was not ripe for judicial determination. As to the duty to indemnify, the court has historically found that duty based upon evidence found by the factfinder in the underlying action.

Expanding its approach, the court determined the duty to defend may also be determined by facts outside of the complaint known to the insurer; the court is not limited only to the allegations of the complaint.

In *Colony*, the court continued the evolution of South Carolina's law with respect to the duty to defend. Relying on an opinion of the United

States Supreme Court, the court found that all the circumstances established a substantial controversy between parties having adverse legal interest, of such immediacy as to warrant the issuance of a declaratory judgment in the absence of an underlying complaint. Consequently, the matter was ripe for adjudication.

The determination of the duty to indemnify has not experienced a similar evolution. Pursuant to SC law, the duty to indemnify is based on evidence determined by the factfinder. Because there was no action and thus, no findings of fact had been made, the issue of the duty to indemnify was not ripe for determination.

A declaratory judgment action provides a vehicle by which parties can clarify their relative positions and resulting duties. The adoption of this more expansive approach, already followed in many jurisdictions, allows SC courts to look at the facts in controversy without the necessity of a pending complaint, thereby affording insurers additional opportunities for early adjudication of their duty to defend.

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