

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2014

PHILADELPHIA, TUESDAY, MAY 27, 2014

VOL 249 • NO. 101

An **ALM** Publication

LITIGATION

Third Circuit Adopts New Standard for Appealability of Remand Orders

BY MICHAEL DOLUISIO AND
ALEXANDER BILUS

Special to the Legal

When a federal district court remands a case to the state court from which the case was removed, a party typically is not permitted to appeal the district court's remand order. Recently, however, in *Reifer v. Westport Insurance*, No. 12-533 (3d Cir. April 29, 2014), the U.S. Court of Appeals for the Third Circuit established a new exception to the standard rule precluding the appealability of remand orders. The court also took the opportunity to clarify several open issues in the jurisprudence surrounding a district court's decision to decline to exercise jurisdiction under the Declaratory Judgment Act. Practitioners within the Third Circuit would be well advised to become familiar with the contours of this sweeping decision and its illumination of this area of law.

In *Reifer*, the plaintiff filed an action against an insurance company in the Court of Common Pleas of Lackawanna County seeking a declaratory judgment under state law. The defendant removed the case to federal district court based on diversity jurisdiction. After significant



DOLUISIO

MICHAEL DOLUISIO is a partner in the firm's white-collar and securities litigation practice in Philadelphia and **ALEXANDER BILUS** is an associate in Deibert's litigation practice in Philadelphia.



BILUS

litigation in federal court, the district court then sua sponte declined to exercise jurisdiction pursuant to the federal Declaratory Judgment Act, which confers discretionary jurisdiction upon federal courts to "declare the rights and other legal relations of any interest party seeking such declaration." The district court remanded the case back to the Lackawanna County court, and the defendant appealed the remand order to the Third Circuit.

On appeal, the Third Circuit affirmed the district court's decision to remand. But before reaching that conclusion, the court thoroughly analyzed its own jurisdiction and the factors that district courts should consider when determining whether

to exercise or decline jurisdiction under the Declaratory Judgment Act.

As an initial matter, the court held that it had jurisdiction to hear the appeal. It is axiomatic that courts of appeals generally only have jurisdiction to review "final decisions" of district courts under 28 U.S.C. Section 1291. The court noted, however, that whether a district court's discretionary remand under the Declaratory Judgment Act is an appealable "final decision" was a matter of first impression. The court began its analysis by explaining that this open question was not answered by the statute that typically precludes appellate review of remand orders, 28 U.S.C. Section 1447(d), because that statute only applies to remands for lack of subject-matter jurisdiction or defects in removal procedure. (See *Quackenbush v. Allstate Insurance*, 517 U.S. 706, 712 (1996).) The court then discussed the U.S. Supreme Court's decision in *Quackenbush*, which addressed the appealability of a remand order that was issued pursuant to the *Burford* abstention doctrine. In *Quackenbush*, the Supreme Court held that such a remand order is appealable where: (1) it "effectively puts the litigants out of court so that its effect is precisely to surrender jurisdiction of a federal court to state court," or (2) it conclusively determines an issue that is separate from

the merits (namely, whether the district court should exercise jurisdiction over the action), the rights asserted on appeal are sufficiently important to warrant an immediate appeal, and the order will not be subsumed in any other appealable order entered by the district court. The Third Circuit held that a remand pursuant to the Declaratory Judgment Act satisfied both of these tests and was “functionally indistinguishable” from the abstention-based remand order found appealable in *Quackenbush*. Accordingly, the court held that a remand order pursuant to a decision to decline jurisdiction under the Declaratory Judgment Act is a “final decision” and reviewable on appeal. The court also held that a district court’s decision to remand under the act is subject to an abuse of discretion standard of review.

The court then addressed the factors that district courts should follow when deciding whether to exercise jurisdiction under the Declaratory Judgment Act. Under the Declaratory Judgment Act, district courts “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.” Because the Declaratory Judgment Act’s grant of jurisdiction is permissive, courts have developed different tests or presumptions for when they should exercise jurisdiction. The Third Circuit therefore took the opportunity to canvas decisions of the other circuit courts and its own prior decisions, and to set forth a “non-exhaustive” list of “uniform” factors for district courts to consider:

- The likelihood that a federal court declaration will resolve the uncertainty of obligation that gave rise to the controversy.
- The convenience of the parties.
- The public interest in settlement of the uncertainty of obligation.
- The availability and relative convenience of other remedies.

- A general policy of restraint when the same issues are pending in a state court.
- Avoidance of duplicative litigation.
- 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*.
- (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.

Practitioners within the Third Circuit would be well advised to become familiar with the contours of this sweeping decision and its illumination of this area of law.

The court spent a fair amount of time addressing the fifth factor, the pendency of the same issues in state court. Although some federal district courts had created a nearly *per se* rule pursuant to which they would exercise jurisdiction over a declaratory judgment action depending upon whether a parallel state-court case was pending, the court rejected such a *per se* approach. Specifically, the court held that the absence of a pending parallel state-court case is just one factor that a district court should consider when deciding whether to exercise jurisdiction under the Declaratory Judgment Act, and does not require the court to exercise jurisdiction. The court did go on to explain, however, that the absence of pending parallel state proceedings “militates significantly in favor of exercising jurisdiction, although it alone does not require

such an exercise.” Conversely, the court stated, the existence of pending parallel state proceedings “militates significantly in favor of declining jurisdiction, although it alone does not require doing so.”

The court also explained the additional relevant considerations that a district court should consider when a parallel state-court case is pending. In those circumstances, district courts should consult the factors in *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491 (1942), to determine “whether the questions in controversy between the parties to the federal suit, and which are not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in state court.” Answering this question may require inquiring “into the scope of the pending state-court proceeding and the nature of the defenses open there, ... whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc.”

The Third Circuit’s decision in *Reifer* is significant for two reasons. It sets forth a new standard for appealing from the remand of a declaratory judgment action. It also gives district courts guidance when deciding whether they should hear cases brought under the Declaratory Judgment Act. Federal court practitioners involved with such cases would be wise to consider *Reifer* when deciding whether to bring a declaratory judgment action in federal court or to appeal from the remand of such a case. •