

ALERT

Federal Court Exercises Jurisdiction over Insurer's Declaratory Judgment Action Arising out of FDIC Demand

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The United States District Court for the Eastern District of California, applying California law, has concluded that it should exercise jurisdiction under the federal Declaratory Judgment Act to determine the availability of coverage for a written demand and has held that the related coverage action should not be stayed in favor of potential future underlying litigation between the Federal Deposit Insurance Corporation (FDIC) and the insureds because the outcome of the coverage litigation would not be dependent on resolution of disputed facts in such a future action. *Progressive Cas. Ins. Co. v. Dalton*, 2012 WL 6088313 (E.D. Cal. Dec. 6, 2012).

The FDIC was appointed receiver of a failed bank. The FDIC then made a \$23 million demand on the bank's former directors and officers for losses related to business strategies that purportedly led to the bank's failure, and the directors and officers tendered the demand to the bank's insurer. The insurer filed a complaint for declaratory judgment and requested a declaration that the insurer had no obligation to defend or indemnify the directors and officers for the FDIC demand because the demand did not seek covered loss under the policy and because it triggered the policy's insured-versus-insured exclusion.

The federal district court held that a case or controversy existed, even though the FDIC had not yet filed suit or completed its investigation into alleged wrongdoing at the bank, because the insurer sought a declaration of the parties' rights and interests in the policy and a judicial determination would clarify the uncertainty of the parties' rights and obligations regarding the FDIC demand. The court also

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held that it should exercise jurisdiction under the Declaratory Judgment Act because: (1) no parallel state court proceeding existed and was not likely to exist because the insurer would not be named in a future suit by the FDIC against the directors and officers; (2) the coverage determination would involve a "relatively straightforward analysis" of the policy that would not require resolution of novel state law issues; (3) the insurer was not forum shopping by filing suit in federal court; and (4) if the court declined to exercise jurisdiction, the insurer would likely bring a future action to address coverage for a subsequent suit by the FDIC against the directors and officers.

The court also denied the request to stay the coverage action because the resolution of the coverage issues would not require resolution of factual issues that could be disputed in a future FDIC suit.

The opinion is available [here](#).