

# Case or Controversy Exists between Insurer and Insured Despite a Judgment in Favor of Insured in Underlying Suit

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The United States District Court for the Northern District of Texas has held that the entry of a judgment in an underlying action in favor of an insured officer and company does not affect the court's subject matter jurisdiction over the insurer's declaratory judgment action concerning the underlying litigation. *Federal Ins. Co. v. COMPUSA, Inc.*, No. 3:01-CV-0593-D, 2001 U.S. Dist. LEXIS 15547 (N.D. Tex. Sept. 26, 2001).

Following a Texas state court jury verdict against an insured company and director for \$234 million, an insurer filed suit seeking a declaration that there was no coverage for the Texas action because of the insureds' late notice. After the declaratory judgment action was filed, the Texas court in the underlying case entered a "take nothing" judgment in favor of the insureds. The plaintiffs appealed that judgment. The insureds then moved to dismiss the federal coverage action for lack of subject matter jurisdiction or, in the alternative, to stay the action. They argued that because they had prevailed in the underlying case, there was no live case or controversy in the federal insurance action.

The court rejected the insureds' contention. First, the court noted that there were settlement discussions ongoing to which the insurer might be asked to contribute. If the court did not determine the insurer's coverage obligations, the insurer would be faced with the choice of either contributing to the settlement even though it does not believe it has any obligation to do so or refusing to contribute and expose itself to a bad faith suit. Second, the court observed that the take nothing judgment could be reversed on appeal. Finally, the court emphasized case law finding that a final determination of the insured's liability is not necessary for there to be an actual case or controversy.

The court also denied the insureds' motion to stay the action pursuant to the court's discretionary authority in declaratory judgment actions. Noting that such discretion exists when supported by considerations of "practicality and wise judicial administration," the court found no such factors present here. The insurer's late notice defense could be decided "without a significant expenditure of judicial resources," and the issue did not depend on any rulings that would occur in the underlying litigation.