

Underlying Claimants: Necessary Parties in Coverage Litigation?

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To sue or not to sue...

- ▶ Reasons why claimant should be included in coverage litigation
 - ▶ Bound by judgment
 - ▶ Discovery
 - ▶ Potential to obtain resolution of all issues
- ▶ Reasons why claimant might not be included in coverage litigation
 - ▶ Another advocate for coverage
 - ▶ Discovery
 - ▶ Jurisdictional concerns

Revised Code 2721.12

§ 2721.12 Declaratory relief; parties; binding legal effect of judgment between insurer and insured.

- ▶ (A) Subject to division (B) of this section, when declaratory relief is sought under this chapter in an action or proceeding, **all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding.** Except as provided in division (B) of this section, a declaration shall not prejudice the rights of persons who are not made parties to the action or proceeding. * * *

Revised Code 2721.12

§ 2721.12 Declaratory relief; parties; binding legal effect of judgment between insurer and insured.

- ▶ (B) A declaratory judgment or decree that a court of record enters in an action or proceeding under this chapter between an insurer and a holder of a policy of liability insurance issued by the insurer and that resolves an issue as to whether the policy's coverage provisions extend to an injury, death, or loss to person or property that an insured under the policy allegedly tortiously caused shall be deemed to have the binding legal effect described in division (C)(2) of section 3929.06 of the Revised Code and to also have binding legal effect upon any person who seeks coverage as an assignee of the insured's rights under the policy in relation to the injury, death, or loss involved. This division applies whether or not an assignee is made a party to the action or proceeding for declaratory relief and notwithstanding any contrary common law principles of res judicata or adjunct principles of collateral estoppel.

Revised Code 3929.06

§ 3929.06 Rights of judgment creditor of insured tortfeasor; binding legal effect of judgment between insurer and insured.

(A)(2) If, within thirty days after the entry of the final judgment * * *, the insurer that issued the policy of liability insurance has not paid the judgment creditor an amount equal to the remaining limit of liability coverage provided in that policy, the judgment creditor may file in the court that entered the final judgment a supplemental complaint against the insurer seeking the entry of a judgment ordering the insurer to pay the judgment creditor the requisite amount. Subject to division (C) of this section, the civil action based on the supplemental complaint shall proceed against the insurer in the same manner as the original civil action against the judgment debtor.

Revised Code 3929.06

§ 3929.06 Rights of judgment creditor of insured tortfeasor; binding legal effect of judgment between insurer and insured.

- ▶ (C)(2) If, prior to the judgment creditor's commencement of the civil action against the insurer in accordance with divisions (A)(2) and (B) of this section, the holder of the policy commences a declaratory judgment action or proceeding under Chapter 2721. of the Revised Code against the insurer for a determination as to whether the policy's coverage provisions extend to the injury, death, or loss to person or property underlying the judgment creditor's judgment, and if the court involved in that action or proceeding enters a final judgment with respect to the policy's coverage or noncoverage of that injury, death, or loss, that final judgment shall be deemed to have binding legal effect upon the judgment creditor for purposes of the judgment creditor's civil action against the insurer under divisions (A)(2) and (B) of this section. This division shall apply notwithstanding any contrary common law principles of res judicata or adjunct principles of collateral estoppel.

Estate of Heintzelman v. Air Experts Inc., 126 Ohio St.3d 138 (2010)

- ▶ Issue: Whether a declaratory judgment obtained in an action initiated by the insurer against its policyholder, was binding on an injured third party/judgment creditor in the third party's supplemental action.

Factual Background:

- ▶ American Family filed a declaratory judgment action against insured, seeking a declaration as to the duty of coverage under the policy.
- ▶ American Family received declaratory judgment, but did not join the Heintzelmans as parties.

Estate of Heintzelman v. Air Experts Inc., 126 Ohio St.3d 138 (2010)

- ▶ Heintzelman obtained a verdict in its suit against insured.
- ▶ Pursuant to O.R.C 3929.06, Heintzelman filed a post-judgment suit against American Family alleging that the insured's policy provided coverage.
- ▶ American Family argued that Heintzelman was bound by the declaratory judgment between it and insured.

Estate of Heintzelman v. Air Experts Inc., 126 Ohio St.3d 138 (2010)

Procedural Posture:

- ▶ Trial court granted American Family's MSJ.
- ▶ Court of Appeals reversed, holding that under O.R.C. 2721.12(B), 2721.02(c), and 3929.06(c)(2), a declaratory judgment relating to insurance coverage is binding upon an insured's judgment creditor only if the insured initiated the declaratory judgment action and since American Family initiated it, its judgment is not binding.
- ▶ Ohio Supreme Court affirmed, reasoning that because American Family did not join Heintzelman, the declaratory judgment is not binding.

Federal Declaratory Judgment Statute:

28 U.S.C. § 2201

- ▶ [A]ny court of the United States, upon the filing of an appropriate pleading, [to] declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

***Suhar v. New Hampshire Ins. Co.*, N.D.Ohio No.
4:08-CV-2280, 2009 U.S. Dist. LEXIS 484543
(May 11, 2009)**

Factual background:

- ▶ National Marine was sued for failure to deliver title to boats and to discharge liens on boats
- ▶ Injured third party (judgment creditors) received a favorable verdict but could not collect from the insolvent company.
- ▶ National Marine was insured by a policy issued by New Hampshire Insurance
- ▶ Policy holder filed a declaratory judgment seeking a judgment regarding the rights and responsibilities of the parties under the insurance policy, but did not name the judgment creditor

***Suhar v. New Hampshire Ins. Co.*, N.D. Ohio No.
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- ▶ The judgment creditors filed a motion to intervene, arguing intervention was required to protect their interest in the judgments entered against National Marine
- ▶ The Court found that *Heintzelman* was inapplicable, noting that the question in *Heintzelman* was whether a declaratory judgment on the issue of coverage is binding on judgment creditors when an insurer, not a policyholder, institutes the action for declaratory judgment.
- ▶ In this case, the policyholder commenced the declaratory judgment action; and thus, the determination on policy coverage will have a binding legal effect upon the judgment creditors in any supplemental action that might be brought against New Hampshire to satisfy the judgments against National Marine.

***PolyOne Corp. v. Nat'l Union Fire Ins. Co.*, N.D. Ohio
No. 5:08 CV 1425, 2008 U.S. Dist. LEXIS 106965, at
*14 (Oct. 14, 2008)**

- ▶ R.C 2721 and R.C. 3929.06 must be read *in pari materia*
- ▶ “[W]hile a tort claimant cannot commence a direct action against the tortfeasor’s insurer until it obtains a judgment against the tortfeasor, the holder of an insurance policy who files a declaratory judgment action seeking determination as to whether the policy provides coverage to someone injured by the policyholder must add the tort claimant to the action.
- ▶ Tort claimant were not fraudulently joined to defeat diversity jurisdiction because they had interest in determination of whether coverage existed, and the declaratory judgment had preclusive effect on that interest.

In *Certain Underwriters at Lloyds v. KG Admin. Serv.*, N.D. Ohio No. 5:19 CV 1246, 2019 U.S. Dist. (Dec. 12, 2019).

- ▶ Declaratory judgment action initiated by the insurer to obtain determination that policy did not provided coverage to KG for lawsuits filed against it for failure to administer their self-funded health benefit plans.
- ▶ KG's Claimants "named as parties for purposes of being bound by the determinations of [the] court."
- ▶ The court held that insurer was entitled to declaratory judgment that it was not obligated to provide coverage for KG's liabilities because KG failed to satisfy two condition precedents to coverage and policy was void *ab initio* due to false warranties made by KG.

In *Certain Underwriters at Lloyds v. KG Admin. Serv.*, N.D.Ohio No. 5:19 CV 1246, 2019 U.S. Dist. (Dec. 12, 2019).

- ▶ District Court dismissed KG Claimants without prejudice because there was no claim pending against them.
- ▶ Does District Court holding raise “case and controversy” concerns when litigating in Federal Court?

Recap

- ▶ **Join all necessary parties to declaratory judgment actions, including the policyholder (if brought by an insurance company), potential tort claimants, and any party whose rights are to be affected**
- ▶ **Failure to do so may render any declaratory judgment non-binding in a judgment creditor's supplemental action**

Questions?

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Thank you for your time and attention



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