PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1215

MEDICAL MUTUAL INSURANCE COMPANY OF NORTH CAROLINA,

Plaintiff - Appellant,

v.

REBECCA ALEJANDRINO LITTAUA; TRI-CITIES INFECTIOUS DISEASE ASSOCIATES, P.C.; KYUNG CHUN YEON,

Defendant – Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:20-cv-00822-HEH)

Argued: March 9, 2022 Decided: May 23, 2022

Before GREGORY, Chief Judge, and NIEMEYER and AGEE, Circuit Judges.

Affirmed by published opinion. Chief Judge Gregory wrote the opinion, in which Judge Niemeyer and Judge Agee joined.

ARGUED: Danny Mark Howell, LAW OFFICES OF DANNY M. HOWELL, PLLC, McLean, Virginia, for Appellant. Edward Kyle McNew, MICHIEHAMLETT, PLLC, Charlottesville, Virginia, for Appellee. **ON BRIEF:** Robert Jackson Martin, IV, LAW OFFICES OF DANNY M. HOWELL, PLLC, McLean, Virginia, for Appellant. Thomas W. Williamson, Jr., WILLIAMSON LAW LC, Richmond, Virginia; M. Bryan Slaughter, MICHIEHAMLETT, PLLC, Charlottesville, Virginia, for Appellees.

GREGORY, Chief Judge:

This appeal requires us to determine whether the district court properly declined to exercise jurisdiction. Because the district court was within its discretion to decline to hear a declaratory judgment action in light of a parallel state-court case, we affirm.

I.

This controversy originates from a medical malpractice lawsuit brought by Ki Hoon Yeon's (the "Decedent") estate administrator in the Circuit Court of the City of Petersburg, Virginia. Among numerous defendants in that case are Rebecca Alejandrino Littaua, M.D. ("Dr. Littaua") and her medical practice, Tri-Cities Infectious Disease Associates, P.C. ("Tri-Cities"). Medical Mutual Insurance Company of North Carolina ("Med Mutual") is Dr. Littaua and Tri-Cities' insurance carrier. Med Mutual initially provided the defense for the state case but, during discovery, alleged that Dr. Littaua had made a material modification or alteration to the Decedent's medical records. Med Mutual then brought the federal action, that is the subject of this appeal, seeking a declaratory judgment concluding that it has no obligation to provide insurance coverage for the defense of the state case.

The alleged record alteration is the sole factual support for denial of insurance coverage. Specifically, the Complaint states: "In January 2019, Dr. Littaua made changes in her patient chart for [the Decedent], including certain substantive and material alterations, modifications, and deletions thereto." J.A. 8. The Complaint provided no more details and contained no specifics as to the nature of the change, why it was made, what

effect it had on the accuracy or completeness of Decedent's chart, or whether the altered information was inaccurate or irrelevant. Med Mutual contends that by committing the alleged alteration Dr. Littaua violated Section IV(e) of her medical malpractice insurance policy (the "Policy").

Yeon filed a motion to dismiss. The district court issued an order and memorandum opinion dismissing the case without prejudice. *Med. Mut. Ins. Co. of N. Carolina v. Littaua*, No. 3:20-CV-822-HEH, 2021 WL 622435, at *2 (E.D. Va. Feb. 17, 2021). The district court held that Virginia courts were better suited to decide Virginia medical malpractice matters, the state court could more efficiently weigh the evidentiary value of Dr. Littaua's alleged alterations, and any resolution by the district court as to whether the alterations were material could result in "unnecessary entanglement" under the test set forth by our Court in *Nautilus Ins. Co. v. Winchester Homes, Inc.*, 15 F.3d 371, 376–77 (4th Cir. 1994) (*abrogated in part on other grounds by Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995)).

II.

Here, the district court declined to exercise jurisdiction over a declaratory judgment action while a parallel action was (and is) pending in state court. We review such a decision for an abuse of discretion.[1] *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 297 (4th Cir. 2005) (citing *Wilton*, 515 U.S. at 290).

[1] We have also described exercise of this discretion as "especially crucial" where, like here, a parallel or related proceeding is pending in state court. *Riley v. Dozier Internet L., PC*, 371 F. App'x 399, 401 (4th Cir. 2010) (*citing New Wellington*, 416 F.3d at 297); (Continued)

Under the Declaratory Judgment Act, upon the proper pleading by an interested party, a district court "*may declare* [their] rights and other legal relations." 28 U.S.C. § 2201(a) (emphasis added). *See Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 201–02 (4th Cir. 2019). This Act "merely permits" federal courts to hear those cases rather than granting litigants a right to judgment. *Id*. at 201 (citing *Wilton*, 515 U.S. at 287); *United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 493 (4th Cir. 1998) ("This permissive language has long been interpreted to provide discretionary authority to district courts to hear declaratory judgment cases").

When a § 2201 action is filed in federal court while a parallel state case is pending, we have recognized that "courts have broad discretion to abstain from deciding declaratory judgment actions." *VonRosenberg v. Lawrence*, 781 F.3d 731, 734 (4th Cir. 2015), *as amended* (Apr. 17, 2015) (emphasis omitted). In those cases, federal courts weigh "considerations of federalism, efficiency, and comity" to choose whether to retain jurisdiction over the case. *New Wellington*, 416 F.3d at 297 (quoting *Nautilus*, 15 F.3d at 376); *see also Brillhart v. Excess Ins. Co. of Am*., 316 U.S. 491, 495 (1942). Following the Supreme Court, this Court recognizes that hearing declaratory judgment actions in such circumstances is ordinarily "uneconomical," "vexatious," and risks a "gratuitous interference" with state court litigation. *New Wellington*, 416 F.3d at 297 (quoting *Brillhart*, 316 U.S. at 495).

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see Centennial Life Ins. Co. v. Poston, 88 F.3d 255, 257 (4th Cir. 1996) (explaining that in such circumstances district courts possess "wide discretion").

With these principles in mind, when deciding whether to hear such a declaratory judgment action, we require consideration of four factors:

> (1) whether the state has a strong interest in having the issues decided in its courts; (2) whether the state courts could resolve the issues more efficiently than the federal courts; (3) whether the presence of "overlapping issues of fact or law" might create unnecessary "entanglement" between the state and federal courts; and (4) whether the federal action is mere "procedural fencing," in the sense that the action is merely the product of forum-shopping.

Id. (citing *Nautilus Ins.*, 15 F.3d at 377).[2]

Applying these principles to the case at hand, we find that the district court did not abuse its discretion when it declined to exercise jurisdiction.

A.

Regarding the first *Nautilus* factor, we agree with the district court's conclusion that Virginia has a strong interest in having this dispute resolved in its courts. States hold a strong interest when the question of state law is "difficult, complex, or unsettled." *Nautilus*, 15 F.3d at 378 (citing *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 236, (1984)); *cf. Myles Lumber Co. v. CNA Fin. Corp.*, 233 F.3d 821, 824 (4th Cir. 2000) (finding no strong state interest when the case was not difficult, problematic, nor implicating a state public policy issue).

Here, the "issues raised in the federal declaratory action" are whether Dr. Littaua breached Section IV(e) of the Policy when she allegedly altered the Decedent's records,

[2] The district court applied only the first three factors to reach its decision. *Med. Mut.*, 2021 WL 622435, at *2. Like the district court, we find no suggestion of procedural fencing ourselves.

and whether a breach of that provision would relieve Med Mutual of its duties to defend and indemnify in the state action. *Nautilus*, 15 F.3d at 376–77. The relevant portion of Section IV(e) of the Policy provides that the insured has the duty "[t]o not, with regard to any Claim or Medical Incident, attempt to or actually destroy, alter, modify, or delete any evidence, or potential evidence, relating to any patient care information, data, records, or films, whether existing in paper or any electronic format, regardless of where and how stored." J.A. 43 (emphasis omitted).

The issues presented in this case are unsettled. The Supreme Court of Virginia has not yet spoken as to what sort of record alterations are sufficient to breach such a provision, nor has it addressed whether such a provision is enforceable if it serves to void medical malpractice coverage. Further, the review of Section IV(e) is complex because a breach must be an act that "attempt[s] to or actually" affects "evidence" or "potential evidence." Determining evidentiary value under Section IV(e) requires a close and contextual review of the malpractice case pending in state court. Whether something is potential evidence depends upon the nuances of that state case and how it develops. The limits of what might be potential evidence in this medical malpractice case are not simple to determine. The resources necessary, both those of the parties and of the district court, to determine the limits of "potential evidence" in this case would be considerable. Because of the unsettled and complex nature of the state law questions at issue here, the state interest favors abstention. *Nautilus*, 15 F.3d at 378 (citing *Hawaii Hous. Auth.*, 467 U.S. at 236).

Virginia also has a strong interest in determining whether, even if breached, a provision such as Section IV(e) can deprive a physician of malpractice insurance coverage.

The Supreme Court has recognized that the States have a "special responsibility" and great interest in regulating their licensed professionals. *See Gunn v. Minton*, 568 U.S. 251, 264 (2013) (finding, through a statutory federal jurisdiction analysis, a great state interest in hearing a legal malpractice case in state court) (internal quotation omitted). While retention of the case at bar by the district court would not require it to hear the merits of the medical malpractice action, its findings and decision could have grave consequences upon physician insurance coverage in Virginia. At oral argument, counsel for Med Mutual conceded that coverage would be voided for even a minor alteration if it were material to Section IV(e). Oral Argument at 45:44, *Medical Mutual Insurance Co NC v. Rebecca Littaua*, (4th Cir. Mar. 9, 2022) (No. 21-1215), https://www.ca4.uscourts.gov/OAarchive/mp3/21-1215-20220309.mp3. Furthermore, Med Mutual does not allege the substantive details of the alteration that it claims to be a material breach of Section IV(e). (Compl. ¶ 11.) This provision could be plainly interpreted to capture a swathe of innocuous or beneficial physician conduct. If the standard set by the district court considers such conduct to be material breaches of Section IV(e), innocent physicians would find themselves without coverage or constraining their behavior to keep their coverage. Even if the standard were set narrowly in district court, including any matter as a material breach beyond what the Virginia Supreme Court would accept generates unnecessary stress on Virginia's healthcare system. Virginia has a strong state interest to determine, in the first instance, how such a contract provision should affect its healthcare regime. *See VRCompliance LLC v. HomeAway, Inc.*, 715 F.3d 570, 573–74 (4th Cir. 2013) (finding that Texas had a strong interest in being first to resolve the meaning of its complex choice-of-law provisions);

Mitcheson v. Harris, 955 F.2d 235, 237–38 (4th Cir. 1992) ("Absent a strong countervailing federal interest, the federal court . . . should not elbow its way into [a] controversy to render what may be an 'uncertain and ephemeral' interpretation of state law") (quoting *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 122 n. 32 (1984)).

Appellees highlight that no case from the Supreme Court of Virginia discusses an insured's duty to not alter medical records in the medical malpractice context, but Med Mutual considers this insufficient to deem the matter unsettled. Med Mutual argues that resolving this case would amount to routine application of settled law. Med Mutual cites *Auto-Owners Ins. Co. v. Cash*, No. 1:09-CV-396, 2009 WL 2601136, at *3 (M.D.N.C. Aug. 20, 2009) in which a district court reasoned that while North Carolina's highest court had not precisely addressed the facts in the case, it had already resolved what "occurrence" and "property damage" meant in similar contexts. Similarly, Med Mutual argues that although Virginia's highest court has not yet addressed the facts at issue, questions of breach and materiality are settled matters of contract law. *See also* 10B M.J. INSURANCE § 154 (2021).

While Med Mutual's argument may have merit, such reasoning does not apply to this case. The question is not unsettled about how to define "alter," "patient care information," or the Policy's "Medical Incident" term, or other similar phrases. Rather, one of the unsettled questions is how to apply "potential evidence." Defining and applying this term requires analysis of the state court proceeding. And resolving the other unsettled

question of how severe a breach must be to become material is a task best left to the Virginia Supreme Court.

Overall, while Virginia law regarding breach and materiality is well settled, whether the alleged alteration in this case breaches Section IV(e) and whether that provision can void coverage are novel and complex questions and represent an important policy question the state has a strong interest in resolving. *Mitcheson*, 955 F.2d at 238 (quoting *Pennhurst*, 465 U.S. at 122 n. 32); *see also Gunn*, 568 U.S. at 264.

B.

The second *Nautilus* factor inquires "whether the issues raised in the federal action can more efficiently be resolved in the court in which the state action is pending." *Nautilus*, 15 F.3d at 377; *see Brillhart*, 316 U.S. at 495. This inquiry reviews "whether the claims of all parties in interest [to the federal proceeding] can satisfactorily be adjudicated in [the state] proceeding, whether necessary parties have been joined, [and] whether such parties are amenable to process in [the state] proceeding." *Brillhart*, 316 U.S. at 495; *Nautilus*, 15 F.3d at 378–79; *Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 212 (4th Cir. 2006).

Here, Med Mutual is not a party to the state case, and the state issue of Dr. Littaua's and Tri-Cities' liability is separate from the federal issue of whether Med Mutual has the duties to defend and indemnify. When presented with similar facts, we have found that efficiency does not support abstention. *Gross*, 468 F.3d at 212 (finding that the insurer was not a party to the state case and that the federal insurance issue was distinct from the state liability issue). But those are not all the facts relevant to the efficiency factor. Although not alone sufficient to justify abstention, this court does consider that Med

Mutual had the ability to bring this same declaratory action in the state court where the malpractice action is pending. *See Gross*, 468 F.3d at 212. Furthermore, this case may more "satisfactorily be adjudicated" in a state proceeding because the Virginia court would have more knowledge of the evidence which Section IV(e) would require the presiding court to review. *Brillhart*, 316 U.S. at 495. Given these circumstances, the efficiency factor may favor retaining this case in federal court, but it is not a clear victory for retention, and efficiency is just one part of the analysis.

C.

Next, this Court must consider the third Nautilus factor: "whether permitting the federal action to go forward would result in unnecessary entanglement between the federal and state court systems because of the presence of overlapping issues of fact or law." *Nautilus*, 15 F.3d at 376–77 (internal quotations omitted). The concern is that if the federal court were to reach final judgment on issues shared with the state case the state court may be precluded from examining those issues. *Nautilus*, 15 F.3d at 377. "[T]he core question that we must resolve is whether the district court's efforts to decide the coverage issue would result in entanglement, through gratuitous interference, with state court proceedings by preempting critical factual findings that the state court will have to make in resolving [the state plaintiff's] claims." *Penn-Am. Ins. Co. v. Coffey*, 368 F.3d 409, 413 (4th Cir. 2004).

Here, the overlapping issues of fact are whether and to what extent Dr. Littaua altered the Decedent's medical records and what will be considered actual or potential evidence in the state trial. For a district court to determine if a breach occurred, it must

resolve the factual circumstances surrounding the alleged record alteration. If, as Med Mutual contends, Section IV(e) is a cooperation clause or otherwise a condition precedent, the insured's willful breach must be substantial and material to relieve the insurer of its contractual duties. *State Farm Mut. Auto. Ins. Co. v. Davies*, 226 Va. 310, 315, 310 S.E.2d 167, 169 (1983) (affirming that breach of an insurance cooperation clause case depends on whether the willful lack of cooperation was substantial and material). If the case were retained, Med Mutual would bear the burden to prove such a breach. *Id*. Here, this would entail proving that Dr. Littaua willfully altered the records of a deceased patient whose estate ultimately sued Dr. Littaua for medical malpractice. Such facts could be used by the plaintiff in state court to help prove her case. Furthermore, the district court would be required to determine what constitutes "evidence" or "potential evidence" under the Policy. This is a necessarily contextual exercise that may either influence or preclude the state court's factual determinations.

Med Mutual contends that there is no factual overlap issue because the record alteration has not yet been alleged in state court. The argument goes that the issue is not before the state court and never will be because neither party would risk voiding the insurance coverage.[3] Therefore, Med Mutual argues the federal issue does not overlap with the state case. However, this *Nautilus* factor is not so limited because certainty of

[3] Lack of coverage for the Plaintiff diminishes her ability to recover. Lack of coverage for the Defendants means the insurer is not providing the defense in the state case, nor indemnity in the event of a judgment.

preclusion is not the standard. Rather, the factor is concerned with those issues of fact that *might* preclude the state court. *Trustgard*, 942 F.3d at 202; *Nautilus*, 15 F.3d at 377.

Here, factual overlap is not certain, but the risk is present and significant. The medical records are of primary importance in wrongful death suits such as this where medical malpractice is the core issue. The facts surrounding the alteration could aid the plaintiff in state court. Although this might be considered a close call, abstention here avoids the preclusive circumstances we seek to avoid. *Trustgard*, 942 F.3d at 202 ("Abstention helps avoid duplicative litigation and interference with state-court proceedings"); *Nautilus*, 15 F.3d at 377, 379.

III.

On the balance of the factors, we cannot identify legal error by the district court. The factors favoring abstention are at least as strong, if not stronger, than those favoring retention. Considerations of federalism and comity counsel that the district court was within its discretion to stay its hand. *Penn-America Ins. Co.*, 368 F.3d at 412. Med Mutual has not demonstrated an abuse by the district court of its broad discretion. *VonRosenberg*, 781 F.3d at 734. Accordingly, after careful review and for the foregoing reasons, the judgment of the district court is hereby

AFFIRMED.