

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 7, 2015)

**SCOTT ALVES, JOHN ALVES, and
CATHY ALVES**

v.

C.A. No. PC2011-5499

ERIC STRICKLETT

SUMMIT INSURANCE COMPANY

v.

C.A. No. PC2012-5368

**ERIC STRICKLETT, SCOTT ALVES,
JOHN ALVES, AND CATHY ALVES**

DECISION

LANPHEAR, J. This matter came on for hearing on March 17, 2015 on the motions of Scott Alves, John Alves and Cathy Alves for priority assignment of a declaratory judgment action (C.A. No. 12-5368) and to advance the declaratory judgment action on the trial calendar. Summit Insurance Company has also submitted a Motion for Priority Assignment of the Declaratory Judgment Action.

I

Facts and Travel

Scott Alves was injured as a result of a motor vehicle collision in April 2002. Mr. Stricklett, the operator of a motor vehicle, had some insurance coverage with Summit Insurance Company (Summit). Summit investigated the claim, communicated with counsel for the Alves family and, in 2003, questioned whether Mr. Stricklett was liable. Time passed and all counsel appeared to be inactive on this claim for eight years.

In June 2011, counsel for the Alves family made a demand to Summit for \$300,000.¹ As Scott Alves was a minor, he filed an action with his parents as his representatives (C.A. No. 11-5499). The suit alleged that Mr. Stricklett negligently operated his motor vehicle. In 2012, Summit filed a separate action, asking the Court to issue a declaratory judgment determining whether Summit had a duty to pay sums beyond the policy limits.

The motion pending before the Court at this juncture requests the Court to determine which issue should be decided first: the declaratory judgment or the tort action.

II

Analysis

Trial courts are conflicted when questions of liability in a personal injury case arise at the same time as issues of insurance coverage. This can result in two lawsuits reaching the court simultaneously. As the existence of coverage may taint the jury on the issue of liability for the injury, the courts attempt to hold the issues separate and apart from the jury.

The Alves family suggests that the high court has already determined that questions of coverage should be advanced, referencing Employers' Fire Ins. Co. v. Beals, 103 R.I. 623, 240 A.2d 397 (1968). However, the actual case language merely recognizes the competing interests:

“If the troublesome issue giving rise to insurer’s dilemma is one which is separable from the issues awaiting to be litigated in the principal tort suit, a declaratory judgment should be liberally awarded. Advance determination of such issues is of great assistance to all the parties; and an early resolution of questions of this type, generally speaking, does not adversely affect the interest of the injured party. Thus, declaratory judgment proceedings are ideally suited for preliminary disposition of such issues as whether or not lack of timely notice or failure to cooperate on the part of the insured absolves the insurer of its obligation to defend or indemnify.

¹ The demand alleges that Summit is not only responsible for the \$25,000 in insurance coverage, but for \$275,000 in interest on all of Mr. Alves’ damages for its failure to proceed in good faith. See Asermely v. Allstate Ins. Co., 728 A.2d 461 (R.I. 1999)

“On the other hand, if the vexatious issue giving rise to the conflict of interests between the insured and the insurer is inextricably related to those issues which will ultimately determine the insured’s liability to the injured party in the tort suit, courts normally and justifiably deny the application for a declaratory judgment. Nationwide Mut. Ins. Co. v. Dennis, 14 A.D.2d 188, 217 N.Y.S.2d 680. To award a declaratory judgment in such an event would doubtlessly clear up the insurer’s obligation to the insured under their insurance contract, but, in our opinion, it would do so at the harsh expense of the injured party. We are of the belief that to allow insurance companies to litigate issues which are identical with ones to be tried later during the injury suit would be tantamount to permitting insurance companies to assume unfairly the control and command of the tort litigation. See 6A Moore, supra, at 3113, and cases cited therein; see also Note, Use Of The Declaratory Judgment To Determine A Liability Insurer’s Duty To Defend-Conflict Of Interests, 41 Ind.L.J. 87, 101. To do otherwise would surely jeopardize the injured party’s right to direct, control and manage the course of his injury suit.” Beals, 103 R.I. at 630-31, 240 A.2d at 401-02.

While there is no clear consensus, it is usually more convenient, and appropriate for the court, to determine whether coverage exists prior to the personal injury trial. Where the issues are severable, as they appear to be here, it is appropriate for the trial court to first determine whether a duty to defend exists, and then allow the liability action to commence. Pennsylvania Gen. Ins. Co. v. Becton, 475 A.2d 1032 (R.I. 1984). This cannot always be achieved, as there may be overlapping issues of fact which require a united trial. Nevertheless, the issuance of a declaratory judgment remains discretionary.² Often, the courts determine questions concerning the duty to defend in advance of the liability trial, as there may be no overlapping issues of fact for this determination.

While the courts occasionally decide whether any coverage exists prior to reaching the trial on liability for the injury, such is not the issue here. Not only is the insurer at bar defending Mr. Stricklett, it is leading the defense—providing coverage and representation from the outset. Summit retained the attorneys who corresponded with counsel in 2003, and it retains two

² Although counsel for the Alves family indicated that the Court was required to determine coverage issues upfront, no authority was cited in the memoranda.

separate counsel to protect Mr. Stricklett now. See Beals, 103 R.I. 623, 240 A.2d 397. Hence, the issue is neither the duty to defend nor the duty to indemnify. To the contrary, the issues in the declaratory judgment action are whether Summit has failed to act in good faith with the Alves family and their counsel and whether the insurer may be responsible for interest and expenses over and above the policy limit of Mr. Stricklett's coverage.

As the issue was not the duty to defend, this Court was initially reluctant to determine the declaratory judgment in advance. Not only is the issue somewhat speculative (without having determined if any liability exists in the underlying tort action), but there are issues of fact—such as Mr. Stricklett's communications with his insurers and counsel, which could be thorny if disclosed at the first trial.

At hearing on the motion to prioritize, the six counsel were oddly divided in their arguments. While the insurer's counsel on the declaratory judgment asked the Court to defer consideration of the declaratory judgment action, counsel for Mr. Stricklett in the personal injury action (retained by the same insurer) indicated that resolving the declaratory judgment action would assist the parties in knowing the extent of their liability, and execution of any judgment on the personal injury would likely be stayed anyway. In addition, counsel for Mr. Stricklett indicated that the issues are limited for the declaratory judgment action, minimal witnesses would need to be called, and it may proceed promptly.

In the cases at bar, there is no issue of the duty to defend. The injured party is requesting the declaratory judgment. The injured party asserts there are no overlapping issues of fact, and the Court knows of no such issues. The question is solely whether Asermely and its aftermath apply and whether the remedies set forth in those cases may be applicable here.

With an eye toward the practical, this Court is mindful that resolution of the declaratory judgment dispute may be dispositive of many of the pending issues. There are several attorneys who may not need to appear at the personal injury trial if the declaratory judgment action is decided, and settlement discussions could then begin in earnest. Further, the goals of the Declaratory Judgment Act—to narrow outstanding legal issues—could be achieved.

III

Conclusion

Plaintiff's motion for priority assignment in C.A. No. 2012-5368 is granted to the extent that it shall have priority over case numbered C.A. No. 2011-5499. As the Court intends to close discovery in C.A. No. 2012-5368 within forty-five days, a Status Conference is scheduled on Tuesday, May 12, 2015 at 9:30 a.m. to establish a scheduling order and a trial date.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLES OF CASES: **Alves v. Stricklett**
and
Summit Insurance Company v. Stricklett, et al.

CASE NOS: **PC 2011-5499 and PC 2012-5368**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **April 7, 2015**

JUSTICE/MAGISTRATE: **Lanphear, J.**

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