

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREENSPAN & GABER, P.C., : CIVIL ACTION  
MITCHELL S. GREENSPAN, and :  
ANDREW H. GABER :  
 :  
 :  
v. :  
 :  
 :  
COREGIS INSURANCE CO., :  
KEVIN H. SCOTT, and :  
MARYANNE SAGE : No. 97-5683

M E M O R A N D U M

This memorandum follows an order entered October 31, 1997, remanding this declaratory judgment action to the Philadelphia Court of Common Pleas.<sup>1</sup>

In October 18, 1996, two former clients, Scott and Sage, filed a malpractice action in the Philadelphia Court of Common Pleas against Greenspan & Gaber, P.C., a Philadelphia law firm. On February 13, 1997, they amended the complaint. On August 18, 1997, the law firm filed a declaratory judgment action in the Philadelphia court against its malpractice liability insurer, Coregis Insurance Company, and the former clients. On August 20, 1997 Coregis filed an identical declaratory judgment in this court naming as defendants the law firm and the clients. On September 10, 1997 Coregis removed the state court declaratory judgment action. The notice of removal asked that the clients, who also were sued by the law firm in the state court declaratory judgment action, be realigned as plaintiffs. It did not refer to

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1. C.P. Phila. No. 1835, Aug. Term 1997.

the identical declaratory judgment action previously filed by Coregis in this court in which the clients were sued as defendants.<sup>2</sup> In opposition, Greenspan & Gaber and the clients, Scott and Sage, thereupon separately moved to remand the removed action and dismiss or stay the action filed here. Removal jurisdiction is diversity. 28 U.S.C. §§ 1332(a), 1441(a).

Under the Declaratory Judgment Act, 28 U.S.C. § 2201, contrary to the general rule disfavoring federal abstention because of a parallel state action, district courts are empowered to exercise discretion in assuming jurisdiction. Brillhart v. Excess Ins. Co., 316 U.S. 491, 494, 62 S. Ct. 1173, 1176, 86 L. Ed. 1620 (1942); Terra Nova Insurance Co. Ltd. v. 900 Bar Inc., 887 F.2d 1213, 1222 (3d Cir. 1989). The teaching of Brillhart is that where declaratory relief is at issue the test is whether the questions presented can better be resolved in the pending state proceeding. 316 U.S. at 495, 62 S. Ct. at 1176.

Here, almost every factor suggests that the state court is the preferable forum. The underlying tort action is there and involves purely state law issues; discovery is underway. Piecemeal, double forum litigation could be avoided, and the "comprehensive disposition" of the "questions in controversy," as encouraged in Brillhart, would be promoted by resolution in the state court. Id. The trial docket there may not move as quickly

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2. The requested re-alignment, given the commonality of interest among the parties in the underlying action, appears to be appropriate. Also, it is consistent with Coregis having filed its declaratory judgment here against all of these parties. The effect of the re-alignment was to obviate the otherwise required joinder of Scott and Sage.

as here. But in this instance, the additional time will permit a determination beforehand of the scope of the law firm's insurance coverage - which could have a significant effect on the underlying lawsuit.

Our Circuit, in Terra Nova, 887 F.2d at 1224-25, has articulated other considerations as well - none of which is a deterrent to abstention. The parties' convenience; the public interest; the availability and relative convenience of other remedies - these are not counterweights, but instead are applicable in both courts. Given the indistinguishable effects of these factors, there appears to be no persuasive reason to retain jurisdiction.

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Edmund V. Ludwig, J.