

Tenth Circuit Says Utah Law Does Not Require Defending Insurer To Settle For Policy Limits Where Coverage Is Debated And Declaratory Judgment Action Is Pending

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Affirming a Utah district court decision, the Tenth Circuit ruled that an insurer defending under a reservation of rights has no duty to accept a policy limits settlement offer where the insurer has filed a declaratory judgment action disputing coverage and the court ultimately finds none. *Owners Ins. Co. v. Dockstader*, 2021 WL 2662251 (10th Cir. June 29, 2021).

A policyholder sought coverage under his homeowner's policy for civil claims arising out of an assault and battery. The insurer agreed to defend under a reservation of rights and sought a declaration that its policy did not cover the underlying conduct. Thereafter, the underlying claimant made a policy limits settlement demand, which the insurer conditionally accepted upon a finding of coverage in the then-pending declaratory judgment action. The claimant then made a second offer to settle for policy limits, and the insurer reiterated its position that it would pay policy limits if the declaratory judgment action resulted in a finding of coverage. When the claimant made a third offer with the same terms, the insurer declined to respond.

The Tenth Circuit rejected the assertion that Utah law requires a defending insurer to accept a reasonable policy limits settlement offer when a declaratory judgment action as to coverage is pending, regardless of whether there is ultimately coverage under the policy, noting the absence of authority supporting that proposition. The court noted that the insurer was obligated to continue defending until the coverage issue was resolved, but rejected the notion that the duty to defend includes an absolute duty to settle even where the declaratory judgment action results in a finding of no coverage.

The dissenting opinion argued that an insurer's duty to accept a settlement while awaiting a coverage ruling in a declaratory judgment action should turn on whether the insurer acted reasonably under the circumstances that existed at the time of the settlement offers, regardless of a subsequent finding of no coverage. Rejecting this proposition, the Tenth Circuit stated:

If we follow the dissent's logic to its natural conclusion, an insurer would have to pay an uncovered claim so long as a third-party claimant made a settlement offer before a district court rendered a decision about coverage. The dissent's approach would

undermine Utah law by making the insurer’s right to seek a declaratory action illusory.

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