

Trustguard Insurance Company v. Collins: The Fourth Circuit's Roadmap to Maintaining a Coverage Action Concurrently with an Underlying Action

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I. Overview

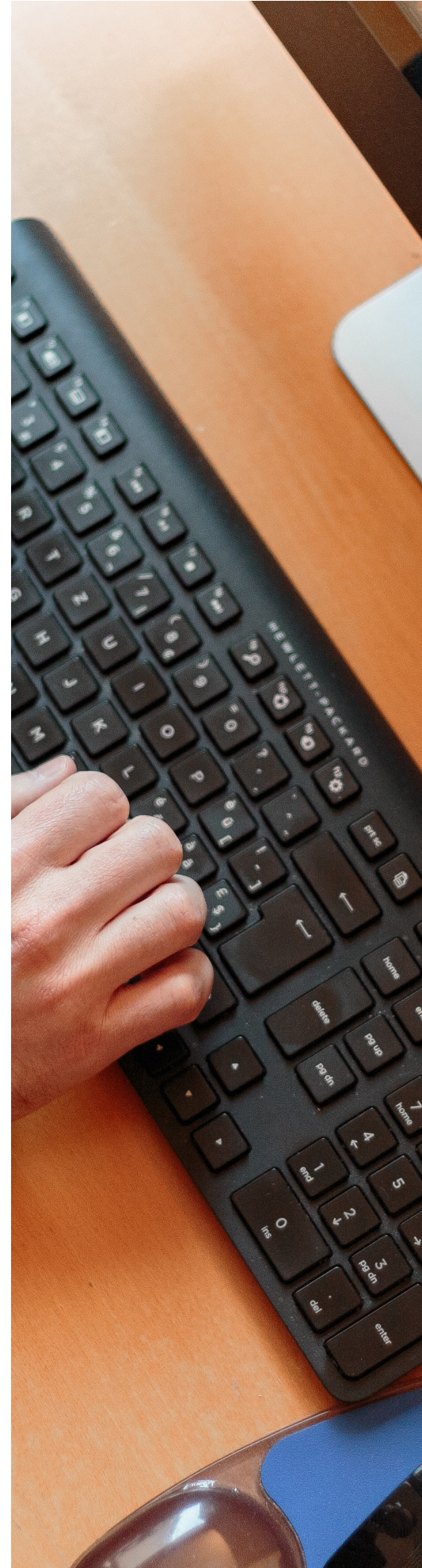
A recent decision by the United States Court of Appeals for the Fourth Circuit may have far-reaching implications on how some insurance coverage cases are litigated. By understanding the scope of the court's ruling and the rationale behind the decision, a savvy litigant may avoid having certain insurance coverage actions dismissed or stayed pending the conclusion of an underlying action.

In Trustguard Insurance Company v. Collins,^[1] the Fourth Circuit reversed the federal trial court's grant of summary judgment to an insurer on the grounds that: (1) the insurer may not have Article III standing; (2) the case or controversy may not yet be ripe for adjudication by the federal trial court; and (3) the trial court should have abstained from issuing a ruling in the coverage action in favor of the pending underlying state court tort action. However, the Trustguard decision was driven by unique factual circumstances and therefore opportunities exist to distinguish other coverage actions and avoid the same fate as the insurer in Trustguard.

II. The Underlying Action

In Trustguard, the underlying personal injury action arose from an accident wherein the plaintiff rear-ended a car trailer being towed by a tow-truck ("the Underlying Action"). The plaintiff initiated a state court personal injury action in which she sued: (1) the owner of the tow truck; (2) the owner of the car; and (3) a motor carrier, who did not own any vehicles involved in the accident and who was not present at the scene of the accident, but whose Interstate Commerce Commission Motor Carrier number was allegedly displayed on the side of the involved tow truck. The plaintiff alleged the motor carrier was vicariously liable for the accident and her damages because the owner of the tow truck was transporting the car trailer under the motor carrier's authority at the time of the accident. In the Underlying Action, the motor carrier disputed liability for the accident and the plaintiff's alleged damages.

[1] 942 F.3d 195 (4th Cir. 2019).



III. The Coverage Action

While the Underlying Action was pending in state court, the motor carrier's insurer initiated a declaratory judgment action in federal court ("the Coverage Action"). In the Coverage Action, the motor carrier's insurer sought an order finding it had no obligation under the policy or under the MCS-90 endorsement [2] to the policy to pay any judgment obtained in the Underlying Action against the motor carrier. The federal trial court agreed with the insurer, finding there was no coverage under the policy because the accident did not involve any covered autos and the MCS-90 endorsement was not triggered under the circumstances of the accident. The federal trial court therefore granted summary judgment in the insurer's favor, which the plaintiff appealed to the Fourth Circuit.

IV. The Trustguard Decision

On appeal, the Fourth Circuit, prior to addressing whether the federal trial court's judgment in favor of the insurer was legally or factually correct, first undertook an extensive analysis to determine whether the federal trial court could or should have issued any ruling in the Coverage Action. Ultimately, it concluded the federal trial court should not have ruled in the Coverage Action under the circumstances and therefore vacated the judgment.

The Fourth Circuit reasoned that the insurer's alleged injury was merely hypothetical and contingent in nature—the insurer might have to satisfy a final judgment entered against the motor carrier, but only if the jury returned a judgment against the motor carrier in the Underlying Action. Therefore, as a first ground for reversing the federal trial court's ruling, the Fourth Circuit, relying upon longstanding authorities cautioning against advisory opinions, questioned whether the federal trial court lacked Article III jurisdiction over the matter and whether the coverage dispute was even ripe for adjudication.[3]

As a second ground for reversing the lower court's decision, the Fourth Circuit held the federal trial court, even assuming the litigants had Article III standing and the case was ripe for adjudication, should have abstained from exercising jurisdiction over the controversy. The court explained the Declaratory Judgment Act provides a federal district court *may* declare the rights of litigants in an actual case or controversy, but is not required to do so. [4] The federal abstention doctrine further advises a federal court to avoid hearing a case or controversy where doing so interferes with state court proceedings.[5] The appellate court found the federal trial court, in deciding the coverage issues, necessarily had to determine issues shared with the Underlying Action, which in turn would have preclusive effect over those same issues pending in the Underlying Action.[6] The Fourth Circuit advised such issues were better decided by the state court in the Underlying Action, where the record was more fully developed.[7] It also appears the Fourth Circuit took into account federalism concerns and deferred to

[2] "[A] MCS-90 endorsement creates a suretyship by the insurer to protect the public when the insurance policy to which the MCS-90 endorsement is attached otherwise provides no coverage to the insured." Canal Ins. Co. v. Distribution Services, 320 F.3d 488, 489 (4th Cir. 2003) (emphasis added). It requires an insurer to pay any final judgment obtained against a motor carrier up to the minimum federal financial responsibility limits provided that the motor carrier was operating as a for-hire motor carrier transporting the goods of another for compensation at the time of the event giving rise to the liability of the motor carrier. See, e.g. 49 C.F.R. §387.3; see also Nat'l Specialty Ins. Co. v. Martin-Vegue, 644 Fed. App'x 900, 906–908 (11th Cir. 2016) (per curiam). In Trustguard, the insurer for the motor carrier disclaimed any coverage under the policy because the policy was a "scheduled auto" policy and none of the vehicles listed on the declarations page were involved in the accident. See Trustguard Ins. Co. v. Brown et al., 3:17-cv-00807-JMC, Compl. ¶¶ 10, 16–19.

[3] See id. at 199–201 (citations omitted). While arguably the Fourth Circuit did not decide these issues, its analysis raises serious questions as to whether the requirements were met.

[4] See id. at 201 (citing 28 U.S.C. § 2201(a) and Wilton v. Seven Falls Co., 515 U.S. 277, 286 (1995)).

[5] See id. at 201.

[6] See id. at 202–203.

[7] See id. at 203 & n.7.

the state court's interests in deciding some of the factual and legal issues under state law, particularly where, as here, there were serious questions about whether the federal trial court even had jurisdiction over the matter.[8]

Based upon these considerations, the Fourth Circuit vacated the federal trial court's ruling and ordered that the Coverage Action be dismissed without prejudice. The Fourth Circuit's ruling left open the possibility that the insurer could re-institute the Coverage Action if, and when, a final judgment was entered against the motor carrier in the Underlying Action. [9]

V. Takeaways and Recommendations

For the insurer that wants to be proactive in resolving coverage disputes prior to the underlying action being reduced to judgment, Trustguard represents a cautionary tale. However, it also presents a roadmap for how to best position future coverage disputes to enable prompt adjudication of the coverage issues while a parallel underlying action proceeds.

First, it is important to understand what Trustguard does not cover. This ruling should not affect coverage actions seeking a determination of an insurer's obligations under a policy to provide a defense to an insured. The Fourth Circuit was careful to distinguish the long history of cases in which courts have rendered decisions on the duty to defend while the underlying tort action is still pending from those in which an insurer seeks a ruling on whether it has any duty to indemnify the insured against a judgment entered in the underlying action. Therefore, Trustguard should not affect coverage cases in which the insurer simply seeks a ruling from a federal court as to its duty under an insurance policy to defend its insured in a parallel state court proceeding.

Trustguard likewise does not uniformly apply to all coverage actions seeking a declaration as to the insurer's duty to indemnify the insured. Rather, it only applies to cases having specific characteristics. One key factor affecting the Fourth Circuit's ruling in Trustguard was the legitimate question as to whether the motor carrier would even be subject to liability in the Underlying Action. As the Fourth Circuit explained, if the motor carrier successfully defended against liability in the Underlying Action, any ruling by the federal trial court in the Coverage Action on the insurer's duty to indemnify under the policy or the suretyship obligations under MCS-90 endorsement would be rendered meaningless. This potential for an "advisory opinion" in the Coverage Action was disfavored by the Fourth Circuit.

Based upon the foregoing, Trustguard does not affect those situations in which a judgment, by default or otherwise, has already been obtained against the motor carrier. Similarly, Trustguard should not apply in admitted liability situations—i.e. where there is no dispute the motor carrier is liable, and both the plaintiff and the motor carrier agree some judgment will be entered against the motor carrier in the underlying tort action. In such situations, the insurer in a coverage action will be able to argue injury in fact—the insurer may have to indemnify the motor carrier for the judgment depending solely upon the federal court's decision in the coverage action (i.e. liability is not at issue in the state court underlying action). This negates the Fourth Circuit's concerns under Article III and the ripeness doctrine discussed in Trustguard.

In those instances, the only remaining concern under Trustguard is whether a federal court would refuse to exercise discretionary jurisdiction to hear the coverage action. However, the litigants may be able to position the case in a manner that makes it more likely the federal court will exercise jurisdiction over the coverage controversy. For example, to avoid application of Trustguard, in appropriate cases litigants may seek to: (1)

[8] See *id.* at 202 (“[C]ourts should exercise their discretionary jurisdiction with caution when doing so would raise serious questions about Article III jurisdiction, as this case does.”).

[9] Under the doctrine of collateral estoppel the insurer, in any subsequently re-initiated Coverage Action, might be prohibited from re-litigating certain factual and legal issues already decided in the Underlying Action.



stipulate to factual issues pertaining to vicarious liability of the motor carrier; (2) stipulate to facts necessary for resolution of the coverage action;^[10] (3) agree to be bound by the federal court's resolution of factual issues implicated in both the underlying state court action and the federal coverage action; (4) stipulate to liability in the underlying tort action in an unspecified amount, thereby leaving to the jury in the underlying action the decision on amount of damages; or (5) enter into a consent judgment against the motor carrier in the underlying tort action. Taking these steps should make it less likely that a federal court, acting pursuant to Trustguard, will either stay or dismiss the federal coverage action in favor of an underlying action pending in state court.

Additionally, there are other options that may reduce the federalism and federal abstention concerns raised by the Fourth Circuit in Trustguard. For one, there remains the possibility of initiating the coverage action in the same state court where the underlying action is pending. This option would negate the discretionary role of the court to hear the declaratory judgment action and the concerns of federalism inherent in the abstention doctrine that only apply to federal courts. Another option is to ensure all underlying actions capable of removal are in fact removed to federal court. This would avoid the situation in which there are parallel state court and federal court actions—a federal court would be presiding over both the underlying action and the coverage action, which in turn, should reduce the deference of the federal court to the state court on factual and legal issues.

As the Fourth Circuit recognized, there are practical benefits to all parties understanding how much money is available to ultimately satisfy any judgment.^[11] Such knowledge may facilitate resolution of disputes in appropriate circumstances or assist the parties in limiting the issues that must be tried in the underlying action. Therefore, both sides have an interest in having the coverage action decided simultaneously with the underlying action. Trustguard arguably limits the ability of the federal courts to hear certain coverage actions in specific situations. However, there remain options to position a coverage action such that Trustguard does not foreclose the possibility of the coverage action being maintained simultaneously with the underlying action. Litigants may have to be more creative in how they approach the coverage actions, but Trustguard by no means requires all coverage actions wait their turn until the underlying actions are concluded.

[10] See, e.g. Progressive Northern Insurance Company v. Bryant Jones dba Jones Trucking, 2020 U.S. Dist. LEXIS 6061, C.A. No. 1:18cv00009 at n.4 (W.D.Va. Jan. 14, 2020) (holding that “based upon the uncontested facts, the plain language of the Policy, and the legal standards[,] Trustguard does not require the federal court to abstain from exercising jurisdiction despite liability not yet having been determined in the underlying personal injury action because the federal court’s ruling would not “intrude on the prerogatives of the state court in the underlying tort action”).

[11] See Trustguard, 942 F.3d at 204.