

# CARLTON FIELDS

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### FLORIDA SUPREME COURT LIBERALIZES COVERAGE DECLARATORY JUDGMENT ACTIONS

#### ***Higgins v. State Farm Insurance Co.***

The Florida Supreme Court's recent decision in Higgins v. State Farm Insurance Co., 29 Fla. L. Weekly S533a (September 30, 2004) resolves a question that has long plagued insurers' efforts to use declaratory judgment actions to determine coverage issues under liability policies.

Until Higgins, the intermediate appeals courts had been in conflict over the appropriate scope of such declaratory judgment actions; that is, whether an insurer may validly pursue a coverage determination in a declaratory judgment suit when the policy language is not ambiguous and the objective of the insurer's suit is simply to resolve contested facts on which coverage turns. In Higgins, the Supreme Court held that, even though the insurance policy is unambiguous, the insurer may pursue a declaratory suit to determine facts upon which the insurer's obligations under the policy depend. Higgins firmly embraces a more liberal use of declaratory actions to determine coverage than has been previously recognized.

Higgins offers little guidance, however, on bedeviling questions over the timing of the insurer's coverage suit *vis-à-vis* the underlying tort suit between the policyholder and the tort claimant. Questions will continue to recur over whether the insurer's declaratory judgment suit should proceed simultaneously with the underlying tort suit, should precede the tort suit, or should be stayed pending the outcome of the tort suit. The lower courts have not developed bright-line guidance on these questions. Though offering general considerations that should be weighed, Higgins explicitly leaves the resolution of these questions to the informed discretion of the trial courts. The most that can be presently said is that, post-Higgins, certain considerations will likely heavily influence timing-sequencing decisions by the lower courts:

- the extent to which contested coverage facts are separate from, or intertwined with, the facts that will govern the outcome of the tort suit;
- the extent to which an early coverage decision will promote settlement or avoid possible collusive pleading in the tort suit in an attempt to bring the tort claim within coverage;
- the extent to which the policyholder has resources, other than coverage, which may respond to a judgment in the tort suit;
- the relative burdens on the interested parties – the insurer, the policyholder, and the tort claimant;
- a preference for early resolution of bona fide coverage disputes, but as Higgins cautions, this preference may be outweighed in a particular case by other considerations.

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