UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7410
Summary Calendar

UNITED STATES FIDELITY
AND GUARANTY COMPANY,

Plaintiff-Appellant,

VERSUS

JOHNNIE F. BLEVINS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA EC 89 279 S D)

(November 24, 1992)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[1]

Appellant, United States Fidelity & Guaranty Company (USF&G) appeals the district court's order staying the appellant's declaratory judgment action. We find no abuse of discretion and affirm.

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[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

USF&G filed this action for declaratory judgment seeking a determination on the issue of coverage under an automobile liability policy and a comprehensive general liability policy. This action was filed after an automobile accident involving a vehicle owned by Hollis Roofing Company (Hollis) and driven by a Hollis employee, Johnnie Blevins. As a result of that accident, Sarah McDill and Sherrell Douglas Jolly were killed. The survivors of Sarah McDill and Sherrell Douglas Jolly filed suit in Mississippi state court against Hollis, the vehicle owner and USF&G's insured, as well as Johnnie Blevins, the driver.

USF&G then filed this declaratory judgment action in federal court and plaintiffs in the state court action answered and filed a counterclaim. The federal declaratory action raises the following issues: (1) whether Blevins was operating the vehicle with the permission of Hollis so as to afford coverage to Blevins for this accident, and (2) whether Hollis was covered by the USF&G policy for its own fault in negligently entrusting the vehicle to an irresponsible driver. On November 13, 1991, the district court **sua sponte** issued an order staying the declaratory judgment action pending the outcome of the state court proceeding. On November 25, 1991, USF&G filed a motion to reconsider the stay order. That motion was denied on February 25, 1992. On March 25, 1992, USF&G filed a motion requesting the district court to certify the stay order for interlocutory appeal under 28 U.S.C. § 1292(b). On May

12 the district court denied that motion. On June 17, 1992, USF&G filed a notice of appeal.

We consider two issues in this appeal: 1) whether we have appellate jurisdiction to review the district court's stay order, and 2) if so, whether the district court abused its discretion in staying the declaratory judgment action.

II.

We directed the parties to brief the issue of our appellate jurisdiction. The district court's order staying this action pending disposition of the state court proceeding is a final appealable order. In **Barnhardt Marine Ins., Inc. v. New England Int'l Surety of America, Inc.**, 961 F.2d 529 (5th Cir. 1992), we stated that "[t]he decision of a district court to stay a suit pending state court proceedings is final for purposes of appellate jurisdiction." **Id.** at 531 (citing **Allen v. Louisiana State Bd. of Dentistry**, 835 F.2d 100, 102 (5th Cir. 1988), **cert. denied**, 112 S. Ct. 1764 (1992)) (other citations omitted).

The parties have also briefed the question whether USF&G's notice of appeal filed in June 1992 is a timely appeal of the November 13, 1991 stay order. We conclude that the appeal is timely. The appellant's timely Rule 59 motion for reconsideration tolled the time for noticing an appeal until the court denied that motion on February 25, 1992. On March 25, 1992, USF&G filed a formal motion asking the district court to certify the stay order for interlocutory appeal. We conclude that the appellant's motion

to certify the district court's stay order to the court of appeals satisfies the requirement of a notice of appeal.

In **Cobb v. Lewis**, 488 F.2d 41 (5th Cir. 1974), this Court considered whether appellant's § 1292(b) petition for leave to appeal filed in the Fifth Circuit satisfied the requirement for a notice of appeal. After reviewing the authorities discussing various pleadings that had been held to satisfy the notice requirement we stated: "These cases teach that the notice of appeal requirement may be satisfied by any statement, made either to the district court or to the Court of Appeals, that clearly evinces the party's intent to appeal." **Id.** at 45. **See also Browning v. Navarro**, 887 F.2d 553, 558 (5th Cir. 1989) (petition for interlocutory appeal is the functional equivalent of a notice of appeal). Appellant's certification request fits easily within this framework.

III.

On the merits of the appeal, the sole question presented is whether the district court abused its discretion in staying the federal court action pending resolution of the state court tort suit. In **Brillhart v. Excess Ins. Co. of America**, 316 U.S. 491 (1942), the Court considered whether the district court properly dismissed a declaratory judgment action concerning insurance coverage because of the pendency of a state court action. The Court found the relevant question to be whether the controversy between the parties to the declaratory action could be better adjudicated in the pending state action to avoid "[g]ratuitous

interference with the orderly and comprehensive disposition of a state court litigation." **Id.** at 495.

In **Magnolia Marine Transport Co., Inc. v. Laplace Towing Corp.**, 964 F.2d 1571 (5th Cir. 1992), this Court stated the relevant factors for district courts to consider when deciding to stay or dismiss a declaratory judgment suit in deference to a state court action. A court may deny declaratory relief:

> because of a pending state court proceeding in which the matters in controversy between the parties may be fully litigated, . . . because the declaratory complaint was filed in anticipation of another suit and is being used for the purpose of forum shopping, . . . because of possible inequities in permitting the plaintiff to gain precedence in time and forum, . . . or because of inconvenience to the parties or the witnesses.

Id. at 1581 (citing **Rowan Cos., Inc. v. Griffin**, 876 F.2d 26, 29 (5th Cir. 1989)).

We are satisfied that the district court exercised its discretion only after a full consideration of all the relevant circumstances. The court observed that in determining coverage under the auto insurance policy or general liability policy, it would be required to decide questions that were determinative of the overall liability of the named insured, Hollis Roofing, in the state court proceeding. The court was also concerned that it would be required in the declaratory action to make an educated **Erie** guess on whether the Mississippi Supreme Court would hold that an

insured could be liable for negligent supervision of its drivers or negligent entrustment of an irresponsible driver with a vehicle. The Court also noted that it was reluctant for reasons of comity to make **Erie** guesses on unsettled questions of state law. The court also found a great deal of jockeying and positioning by the parties to obtain what they considered a favorable arena for a race to res judicata.

We are persuaded that the district court carefully considered the relevant factors before staying its hand in favor of the state court. Accordingly, the judgment of the district court is affirmed.

AFFIRMED.