

# Taking Control of a Dispute by Filing a Declaratory Judgment and Setting the Stage for a Successful Appeal



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For companies involved in an active dispute, filing a declaratory judgment often offers a way to take control of the situation. This strategy comes with significant advantages that not only help pave the way for successful litigation, but also have significant impacts for how an appellate attorney can ultimately prevail when an appeal follows. This blog post examines a case recently announced by the U.S. Court of Appeals for the Eighth Circuit in which a declaratory judgment was effectively used by an insurance company resulting in success both at the district court and on appeal.

**Advantages of Filing a Declaratory Judgment.** A declaratory judgment provides a strategic means of resolving uncertainty, such as when claims are imminent. By initiating the lawsuit, the filer gets to establish the claims, define the key parties and legal issues, tell its side of the story first, and proactively address or neutralize any bad facts in the case. Another significant advantage is establishing the forum in which the lawsuit is initiated. This is especially true when a dispute could be filed in several possible forums, but one would present a home court advantage. Alternatively, by sitting back and waiting to get sued, a party understandably finds itself in more of a defensive posture and loses some of this control.

**Implications for Summary Judgment and Appeal.** By selecting the forum and defining the contours of the dispute, skilled litigators are often seeking to set up a dispositive motion that not only succeeds, but that withstands an appeal. This point is illustrated in the Eighth Circuit's recent case. There, an insurance company filed a declaratory judgment against its insured seeking a judicial determination that it was not responsible for paying out on a claim under a business interruption insurance policy. The insurance company filed suit, and set the table for a successful motion for summary judgement. That motion was granted because the insurance company demonstrated an objectively reasonable basis for denying the full claim and limiting payment. That was all the district court needed. In filing the declaratory judgment, the lawyers had strategically focused the court on "whether evidence existed to justify [the insurer's] denial of the claim" because a court is "not tasked with weigh[ing] the conflicting evidence that was before the insurer." On appeal, the insured business had arguments about inaccuracies in handling the claim and showed that the investigation could have been handled differently. But the Eighth Circuit held that "an imperfect investigation, standing alone, is not sufficient cause for recovery if the insurer in fact has an objectively reasonable basis for denying the claim." By making sure that the record at the district court was framed around the insurance company's objectively reasonable basis, and by being clear about the law that would ultimately matter on appeal, the insurance company's lawyer litigated the entire case around this successful legal theory. From the filing of the declaratory judgment all the way up through appeal, the table was set for this success.

**Declaratory Judgments on the Rise.** This case involved a declaratory judgment over an insurance company's denial of benefits under a business interruption insurance policy. In the wake of the global pandemic, these types of lawsuits are on the rise, and will be for years to come. From September 11, 2001, to Hurricane Katrina, and other mass emergencies, we know that these catastrophes touch off waves of disputes between insurance companies and insureds over business interruption insurance claims. Due to the sheer number of claims at issue, insurance companies are understandably cautious of establishing unfavorable precedent, and therefore consider strategic deployment of the declaratory judgment with ever increasing frequency. Given the powerful effect of declaratory judgments, such increased reliance is well placed.

Case reference: *Hallmark Specialty Insurance Company v. Phoenix C&D Recycling, Inc.*, Case no. 20-1339 (8th Cir. June 1, 2021).