

# PMPED

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June 16, 2020

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The Honorable Jenny Abbott Kitchings  
S.C. Court of Appeals Clerk of Court  
Post Office Box 11629  
Columbia, SC 29211-1629

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JUN 19 2020  
SC Court of Appeals

*Re: Ex. Parte: Trustgard Insurance Company  
Appellate Case No.: 2019-001506*

Dear Ms. Kitchings:

Graham's reply to Trustgard's Return to the Motion to Dismiss Trustgard's appeal filed on June 9, 2020, referenced Trustgard's motion to stay filed in federal court. (Reply p. 3). We wanted to provide the Court with an update that on June 15, 2020, the federal court granted Trustgard's motion to stay pending the outcome of this appeal. A copy of the order is attached to this letter.

With kind regards, I am

Sincerely,  


William F. Barnes, III

WFB/mcd  
Enclosures as stated

cc: Michael Reid Burchstead, Esquire  
Brian T. Smith, Esquire  
Dorothy H. Hogg, Esquire  
Shelley Montague, Esquire  
Janice Holmes, Esquire

**Megan Davis**

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U.S. District Court

District of South Carolina

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**Case Name:** Trustgard Insurance Company v. Graham et al

**Case Number:** 6:19-cv-02269-TMC

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**Document Number:** 71(No document attached)

#### Docket Text:

**TEXT ORDER:** This matter is before the court on Plaintiff Trustgard Insurance Company's ("Trustgard") motion to stay (ECF No. [44]) and supplemental motion to stay (ECF No. [57]) the counterclaim (ECF No. [11]) filed by Defendant Full Logistics, Inc. ("Full Logistics") or, in the alternative, the entire declaratory judgment action. Trustgard seeks a stay pending resolution of its appeal in the underlying state court personal injury action, which is presently before the South Carolina Court of Appeals. Defendant Terence Graham ("Graham") filed responses in opposition to the motion to stay and supplemental motion to stay (ECF Nos. [48], [63]), as did Full Logistics (ECF Nos. [52], [62]). Trustgard filed a reply. (ECF No. [61]). The matter is now ripe for review.

The Declaratory Judgment Act gives district courts in "a case of actual controversy within its jurisdiction" discretion to decide whether to declare the rights of litigants. 28 U.S.C. § 2201. Courts, however, "may abstain from exercising jurisdiction under certain circumstances that may intrude on the prerogative of state courts" in order to "avoid duplicative litigation and interference with state-court proceedings." *Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 201 (4th Cir. 2019). The decision to stay a declaratory judgment is committed to the sound discretion of this court. See *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). "The court's discretion is especially crucial when a parallel or related proceeding is pending in state court." *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 297 (4th Cir. 2005) (internal quotation marks omitted). In those circumstances, district courts "have rather wide discretion

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to decline jurisdiction." *Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 257 (4th Cir.1996) (internal quotation marks omitted).

In determining whether to grant a discretionary stay of a declaratory judgment action in light of overlapping litigation pending in the state court, a district court should be guided by, among other principles, traditional "considerations of federalism, efficiency, and comity." *Poston*, 88 F.3d at 257 (internal quotation marks omitted). These include: (1) "the state's interest in having its own courts decide the issue"; (2) whether a state court can "resolve the issues more efficiently than the federal courts"; (3) "the potential for unnecessary entanglement between the state and federal courts based on overlapping issues of fact or law"; and (4) "whether the federal action is mere forum-shopping." *Trustgard Ins.*, 942 F.3d at 202.

The court concludes that the potential for "excessive entanglement" weighs in favor of staying this action until the state court proceedings come to rest. If Trustgard's appeal of the order denying the motion to set aside the judgment is successful, then the parties will be required to fully litigate the claims asserted against Full Logistics in the underlying action, which asserts that Full Logistics is vicariously liable for Graham's injuries under the doctrine of respondeat superior based on Foster's status as an employee. (ECF No. [1]-1 at 812). But Foster's alleged employment with Full Logistics is also at issue in the federal declaratory judgment action and the granting of declaratory relief would necessarily require the court to resolve that issue, possibly resulting in a preclusive effect for the ongoing litigation in state court. (ECF No. [1] at 45). Were this court to first resolve such issues in this venue, it "might have the unfortunate result of precluding the parties from fully litigating them in state court." *Trustgard Ins.*, 942 F.3d at 20203.

Accordingly, the court concludes that a stay of this declaratory judgment action is appropriate to allow the South Carolina Court of Appeals to render a decision in the pending appeal seeking to set aside the underlying default judgment. The court declines Trustgard's suggestion that it stay only the counterclaims in this action, which would require it to proceed in piecemeal fashion. Thus, the court GRANTS Trustgard's motion to stay (ECF No. [44]) and supplemental motion to stay (ECF No. [57]) and STAYS this declaratory judgment action until further order of the court, with the following exception: Trustgard is directed to respond to Graham's motion to compel (ECF No. [64]) within the time prescribed by the applicable rules, and the court will decide that motion if the parties are unable to resolve their discovery dispute. All other pending motions and deadlines are stayed until further order of this court. The parties are further directed to submit a joint status report every sixty (60) days and are required to promptly notify the court when the state appeal has been decided. IT IS SO ORDERED. Entered at the direction of the Honorable Timothy M Cain on 6/15/20.(kmca)

6:19-cv-02269-TMC Notice has been electronically mailed to:

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