

SUPREME COURT OF THE STATE OF DELAWARE

National Union Fire Insurance Company of Pittsburgh, PA v. FedEx Corp.

No. 287, 2023 · No. No. 287, 2023 · Decided September 8, 2023

SUMMARY

The Delaware Supreme Court refused an interlocutory appeal from a Superior Court order staying a Delaware insurance-coverage action in deference to a related Pennsylvania action. The Court held that the application did not satisfy the strict standards for certification under Delaware Supreme Court Rule 42 and that interlocutory review would not be warranted.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	N. Christopher Griffiths; Chief Justice Seitz; Justice Legrow; Justice Griffiths
JURISDICTION	Delaware
DECIDED	September 8, 2023
DOCKET	No. 287, 2023
DISPOSITION	other
PROCEDURAL POSTURE	National Union sought interlocutory review of the Delaware Superior Court's order staying the Delaware insurance-coverage action in deference to a parallel Pennsylvania action. The Superior Court denied National Union's application to certify an interlocutory appeal, and the Delaware Supreme Court refused interlocutory review.
STANDARD OF REVIEW	Applications for interlocutory review are addressed to the Supreme Court's sound discretion. Certification requires satisfaction of the strict standards of Delaware Supreme Court Rule 42, including exceptional circumstances warranting review and a determination that the benefits of review outweigh the inefficiency, disruption, and probable costs of an interlocutory appeal.
PRECEDENTIAL VALUE	published
PARTIES	National Union Fire Insurance Company of Pittsburgh, PA v. FedEx Corp., FedEx Ground Package System, Inc.

TOPICS

interlocutory appeal

appellate procedure

insurance coverage

commercial litigation

civil procedure

PRACTICE AREAS

appellate procedure

insurance

commercial litigation

civil procedure

QUESTIONS PRESENTED

1. Whether the Delaware Supreme Court should accept interlocutory review of the Superior Court's order staying the Delaware action.
2. Whether the application satisfied the strict certification standards under Delaware Supreme Court Rule 42(b).

HOLDINGS

1. Interlocutory review was not warranted because the application did not satisfy the strict standards for certification under Delaware Supreme Court Rule 42(b), and no exceptional circumstances justified review.

KEY QUOTATIONS

“Exceptional circumstances that would merit interlocutory review of the Opinion do not exist, and the potential benefits of interlocutory review do not outweigh the inefficiency, disruption, and probable costs caused by an interlocutory appeal.” (at 5)

“NOW, THEREFORE, IT IS ORDERED that the interlocutory appeal is REFUSED.” (at 5)

FACTUAL BACKGROUND

The dispute concerns insurance coverage for pre- and post-judgment interest connected to a \$157 million jury verdict and judgment in a New Mexico personal-injury action. National Union filed a Delaware declaratory-judgment action seeking a ruling that it had no obligation to pay post-judgment interest. FedEx separately filed a broader Pennsylvania action against National Union and other excess insurers. The Pennsylvania court declined to dismiss or stay its action, and the Delaware Superior Court stayed the Delaware action in deference to the Pennsylvania proceeding.

PROCEDURAL HISTORY

National Union filed a declaratory-judgment action in the Delaware Superior Court concerning its obligation to pay post-judgment interest arising from a New Mexico personal-injury verdict. FedEx moved to dismiss or stay the Delaware action, while a broader Pennsylvania action involving the insurers was pending. The Superior Court denied dismissal but stayed the Delaware action on comity and judicial-efficiency grounds, then denied National Union's request to certify an interlocutory appeal. The Supreme Court refused the interlocutory appeal.

DISPOSITION

other

CASES CITED

- Nat'l Union Fire Ins. Co. v. FedEx Corp., 2023 WL 4623626 (Del. Super. Ct. July 18, 2023)
- Nat'l Union Fire Ins. Co. v. FedEx Corp., 2023 WL 5310443 (Del. Super. Ct. Aug. 16, 2023)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE NATIONAL UNION FIRE §
INSURANCE COMPANY OF § No. 287, 2023 PITTSBURGH, PA, § § Court Below–Superior
Court Plaintiff Below, § of the State of Delaware Appellant, § § C.A. No. N22C-08-488 v. § §
FEDEX CORP. and FEDEX § GROUND PACKAGE SYSTEM, § INC., § § Defendants Below, §
Appellees. § Submitted: August 17, 2023 Decided: September 8, 2023 Before SEITZ, Chief
Justice; LEGROW and GRIFFITHS, Justices.

ORDER After consideration of the notice of interlocutory appeal, the supplemental notice of
interlocutory appeal, and their exhibits, it appears to the Court that: (1) This appeal concerns a
dispute between FedEx Ground Package System, Inc. (“FedEx Ground”) and its excess insurers
regarding insurance coverage for pre- and post-judgment interest incurred in connection with a
\$157-million jury verdict and judgment entered in a New Mexico personal-injury lawsuit (the
“New Mexico Verdict”).

On August 30, 2022, one of FedEx Ground’s excess insurers, National Union Fire Insurance
Company of Pittsburgh, PA (“National Union”), filed suit in the Delaware Superior Court (the
“Delaware Action”) against FedEx Ground and FedEx Corp. (together, “FedEx”) seeking a
declaratory judgment that National Union has no obligation to pay post-judgment interest on the
New Mexico Verdict.

On September 6, 2022, FedEx Ground filed a separate action in the Pennsylvania Court of
Common Pleas (the “Pennsylvania Action”) alleging breach of contract and other claims against
National Union and two of FedEx Ground’s other excess insurers, Great American Insurance
Company of New York (“GAIC”) and Liberty Mutual Insurance Europe Limited (“Liberty
Mutual”).

Shortly thereafter, FedEx filed a motion to dismiss or stay the Delaware Action. National Union
then filed an amended complaint, adding GAIC and Liberty Mutual as co-defendants in the
Delaware Action. (2) In the Pennsylvania Action, all three insurers filed preliminary objections,
arguing, among other things, that the Pennsylvania Action should be dismissed or stayed in
deference to the Delaware Action.

In the Delaware Action, FedEx moved to dismiss or stay the proceedings on the grounds of comity or forum non conveniens in light of the pending and larger-in-scope Pennsylvania Action. On February 8, 2023, the Pennsylvania court denied the insurers' preliminary objections and declined to stay the Pennsylvania Action.¹ On May 25, 2023, the Pennsylvania court denied the insurers' motion for reconsideration of its ruling.

(3) On July 18, 2023, the Superior Court denied FedEx's motion to dismiss the Delaware Action but granted its request to stay the Delaware Action, deferring to the Pennsylvania Action in the interests of comity and judicial efficiency (the "Opinion").² Observing that the Pennsylvania court had decided—over the insurers' objections—that the Pennsylvania Action should proceed, the Superior Court concluded that a stay would conserve judicial resources as well as avoid confusion, inconsistent rulings, and duplicative litigation costs.³ National Union asked the Superior Court to certify an interlocutory appeal of the Opinion under Supreme Court Rule 42.

FedEx opposed the application. (4) On August 16, 2023, the Superior Court denied National Union's application.⁴ As a preliminary matter, the Superior Court disagreed with National Union's claim that the Opinion decided a substantial issue of material importance— a threshold consideration under Rule 425—because it did not relate to the merits of the case. Nevertheless, the Superior Court analyzed the Rule 42(b)(iii) factors cited by National Union—specifically, Factors A (the Opinion decided an issue of first impression in the State), B (the Opinion conflicts with other trial court decisions), and H (interlocutory review of the Opinion would serve the considerations of 2 Nat'l Union Fire Ins.

Co. v. FedEx Corp., 2023 WL 4623626 (Del. Super. Ct. July 18, 2023) ("FedEx I").³ Id. at *8. 4 Nat'l Union Fire Ins. Co. v. FedEx Corp., 2023 WL 5310443 (Del. Super. Ct. Aug. 16, 2023) ("FedEx II").⁵ Del. Supr. Ct. R. 42(b)(i). 3 justice)—and concluded that none of them supported the certification of an interlocutory appeal.

(5) First, the Superior Court found that National Union's application for certification mischaracterized the Opinion because the court granted FedEx's request for a stay "solely on the grounds of comity,"⁶ but National Union's application cited the court's forum non conveniens analysis.

As it had in the Opinion, the court emphasized that it had offered its forum non conveniens analysis only as supplemental commentary in the event that "some issue arises in the Pennsylvania Action warranting lifting the stay in the [Delaware A]ction."⁷ That is, the decision to stay the Delaware Action was based on comity and judicial-efficiency principles and did not involve a novel application of the forum non conveniens doctrine.

Second, the Superior Court found that the Opinion does not conflict with the other trial court decisions cited by National Union because they relate to the application or misapplication of the

doctrine of forum non conveniens.

Finally, the Superior Court found that considerations of justice would not be served by interlocutory review because, among other things, National Union would not suffer any irreversible prejudice if it were forced to litigate the insurance-coverage dispute in Pennsylvania as opposed to Delaware. Mindful of Rule 42's directive that a trial 6 FedEx II at *3.

7 Id. 4 court should refuse to certify an interlocutory appeal if it finds the balance of the Rule 42(b)(iii) factors to be uncertain,⁸ the Superior Court denied the application. (6) We agree with the Superior Court that interlocutory review is not warranted in this case. Applications for interlocutory review are addressed to the sound discretion of the Court.⁹ Exercising our discretion and giving due weight to the Superior Court's analysis, we have concluded that the application for interlocutory review does not meet the strict standards for certification under Rule 42(b).

Exceptional circumstances that would merit interlocutory review of the Opinion do not exist,¹⁰ and the potential benefits of interlocutory review do not outweigh the inefficiency, disruption, and probable costs caused by an interlocutory appeal.¹¹ NOW, THEREFORE, IT IS ORDERED that the interlocutory appeal is REFUSED. BY THE COURT: /s/ N. Christopher Griffiths Justice 8 Del.

Supr. Ct. R. 42(b)(iii). 9 Del. Supr. Ct. R. 42(d)(v). 10 Del. Supr. Ct. R. 42(b)(ii). 11 Del. Supr. Ct. R. 42(b)(iii). 5