



Dueling Federal and State Actions: The 'Colorado River' Doctrine

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I. The *Colorado River* Doctrine – Alive and Well

Consider the following: two parties to a contract are embroiled in a dispute and each thinks the other is in breach. Resolution attempts have failed, and a lawsuit appears imminent. The forum selection clause permits either a state or federal court of competent jurisdiction.

A race to the courthouse ensues. Party A gets there first and files in state court alleging breach of the agreement. But one day later, Party B files in federal court, alleging Party A is in fact the one in breach. The parties are now left to prosecute and defend against duplicative civil suits, with the plaintiff in each action hoping its case takes precedence. Neither party wants to pay to litigate the same dispute in two forums.

Enter the *Colorado River* doctrine, a creature of abstention that counsel may not have encountered since 1L civil procedure. The *Colorado River* doctrine allows a federal court to relinquish jurisdiction in deference to a state action.^[1] Party A—the state court plaintiff—may seek to use the *Colorado River* doctrine to dismiss or stay^[2] the federal action. Party B will want to convince the federal court that its action does not meet the narrow confines of the doctrine. Before embarking on this winding procedural battle down the Colorado River, both parties should know how the relevant forum applies the doctrine.

II. Application of the Doctrine

A. Factors Considered

In all circuits, abstention pursuant to *Colorado River* is warranted only if the federal and state proceedings are truly parallel, meaning that resolution of one action will also resolve the other. If so, the federal court will determine whether the following factors weigh in

favor of abstention:

- Whether the dispute involves property;
- The relative convenience of the forums;
- Avoidance of piecemeal litigation;
- The order in which jurisdiction was obtained;
- Governing law (state or federal law); and
- The adequacy of the state court action to protect the federal plaintiff's rights.[\[3\]](#)

Note that the application of the *Colorado River* doctrine is an issue for only the federal court to decide. The state court may be unaware of the federal filing altogether or may ultimately choose to dismiss or stay the action before it on other grounds (e.g., failure to state a claim). But the state court does not weigh in on whether federal abstention is appropriate.

B. Circuit Preference

The *Colorado River* doctrine has varied application across the circuits. Some courts apply the doctrine liberally in an effort to relieve crowded dockets. Others take a narrow approach, searching for the truly "exceptional circumstances" in which a federal court may decline to exercise its jurisdiction.[\[4\]](#)

The practical application of the doctrine also differs by circuit. Even where a litigant successfully moves under the *Colorado River* doctrine, the result may not be dismissal of the federal action. The U.S. Supreme Court has left federal courts with the discretion to dismiss or stay cases.[\[5\]](#) Before relying on the *Colorado River* doctrine to knock out an opponent's dueling federal action (or defending against it), it is best to understand how the jurisdiction employs the doctrine. Below is a summary of the doctrine in Frost Brown Todd's footprint. If you have questions about a different jurisdiction, please reach out to counsel at the firm.

- **Third Circuit.** The Third Circuit is conservative in its approach and "narrowly construe[s] the circumstances that would qualify for abstention."[\[6\]](#) While there are some instances in

which the majority of the *Colorado River* factors support abstention,^[7] the Third Circuit has emphasized that there is a “strong presumption in favor of exercising jurisdiction.”^[8] In the rare circumstances where the doctrine applies, the Third Circuit finds it better to stay, rather than dismiss an action.^[9] But dismissal can be appropriate when the plaintiffs’ claim “may be fully stated and resolved as a counterclaim in the state action.”^[10]

- **Fourth Circuit.** The Fourth Circuit is more willing than its sister circuits to allow *Colorado River* abstention, specifically when difficult or dispositive questions of state law are involved.^[11] Courts in the Fourth Circuit base the decision to dismiss or stay on the nature of the case: where unsettled questions of state law exist, the federal case is often stayed. Once the state court weighs in, if the case is not fully resolved, it can return to federal court.^[12]
- **Fifth Circuit.** The Fifth Circuit makes an important distinction between “piecemeal litigation”—a factor of the *Colorado River* analysis—and “duplicative litigation.” The Fifth Circuit has explicitly noted that “[t]he prevention of duplicative litigation is not a factor to be considered in an abstention determination.”^[13] The Fifth Circuit is also reluctant to abstain due to state law uncertainty.^[14] When applying the *Colorado River* doctrine, the Fifth Circuit favors a stay over dismissal, noting a stay “may likely produce the same practical result as a dismissal while still leaving the docket open in case loose ends remain at the conclusion of the state proceedings.” ^[15]
- **Sixth Circuit.** In addition to the six factors listed above, the Sixth Circuit also assesses “the relative progress of the state and federal proceedings,”^[16] which may present important strategic considerations for the parties (see Section III below). In other words, if the state court action has moved faster than the dueling federal action, the federal court may be more inclined to abstain (and vice versa). In the Sixth Circuit, “issuing a stay of proceedings has been the general practice” for efficiency and statute of limitations concerns.^[17]

- **Seventh Circuit.** The Seventh Circuit gives great weight to avoiding piecemeal litigation and efficiency.^[18] When “the state and federal forums have substantially the same parties before them and are litigating substantially the same issues arising from the same set of facts,” courts in the Seventh Circuit are inclined to abstain under the *Colorado River*.^[19] Unique among circuits, the Seventh Circuit employs a 10-factor analysis.^[20] The Seventh Circuit has explicitly instructed that lower courts should stay, rather than dismiss, proceedings under the doctrine.^[21]
- **Ninth Circuit.** The Ninth Circuit, like the Third Circuit, applies the *Colorado River* doctrine narrowly, but notes that “[a] general preference for avoiding piecemeal litigation is insufficient to warrant abstention.” ^[22] The Ninth Circuit employs an eight-factor analysis to assess whether abstention is proper.^[23] Courts in the Ninth Circuit “must stay, rather than dismiss, an action when they determine that they should defer to the state court proceedings under *Colorado River*.”^[24]

Key Takeaways

This seemingly academic doctrine has practical application. Whether before or after litigation has ensued, consider whether you may find yourself pursuing (or defending against) a motion under the *Colorado River* doctrine. Do the factors your circuit considers cut in your favor? Can anything be done to alter the balance?

- **Get there first and move fast.** Where the state court case is filed first, it will weigh in favor of *Colorado River* abstention, but consider whether there are other steps you can take that might influence the outcome of the *Colorado River*. Would taking an extension or agreeing to one be prudent? Is the jurisdiction known for having a “rocket docket” or quirky timing under local rules? Any of the above could affect the relative progress of the state and federal cases, a factor that the Sixth Circuit specifically considers.

- **Non-parallel paths.** If you lose the race to the courthouse and find yourself as the defendant in state court, consider whether you can file a federal action that differentiates itself from the state action. Are there viable claims that could make the cases non-parallel, thus cutting off a motion under the *Colorado River* doctrine in its tracks?
- **Settlement leverage.** Litigating complex procedural issues like the application of the *Colorado River* doctrine is costly. If the parties are negotiating pre-suit, consider whether the parties can agree on a forum or a notice provision in advance of filing suit.

Finally, when a federal court stays (rather than dismisses) an action under *Colorado River*, the parties should remember to inform the federal court of the outcome of the state action so that the federal action can either proceed or be fully dismissed from the federal court's docket. Similarly, don't forget about the stayed federal case when negotiating a settlement—consider whether the resolution should include all disputes.

If you have more questions about the *Colorado River* doctrine, please reach out to the authors or any attorney in Frost Brown Todd's [Business & Commercial Litigation](#) practice group.

**Alex MacLennan contributed to this article while working as a summer associate at Frost Brown Todd.*

[1] See *Colorado River Water Conservation Dist., et al. v. United States*, 424 U.S. 800 (1976).

[2] See Section [] for Circuit preference on dismissing versus staying an action under the doctrine.

[3] Each Circuit articulates these factors slightly differently and some assess additional factors as part of the analysis. Be sure to consult controlling precedent.

[4] *Colorado River*, 424 U.S. at 813.

[5] *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 28 (1983).

[6] *Spring City Corp. v. Am. Buildings Co.*, 193 F.3d 165, 172–73 (3rd Cir. 1999).

[7] *BIL Mgmt. Corp. v. New Jersey Econ. Dev. Auth.* 310 F. App'x 490, 492–93 (3rd Cir. 2008).

[8] *Ryan v. Johnson*, 115 F.3d 193, 200 (3rd Cir. 1997).

[9] *Ingersoll–Rand Fin. Corp. v. Callison*, 844 F.2d 133, 138 (3rd Cir. 1988).

[10] *Fidelity Fed. Bank v. Larken Motel Co.*, 764 F. Supp. 1014, 1019 (E.D. Penn. 1991).

[11] *Cox v. Planning Dist. I Cmty. Mental Health and Mental Retardation Servs. Bd.*, 669 F.2d 940, 942 (4th Cir. 1982).

[12] *Id.*

[13] *Saucier v. Aviva Life and Annuity Co.*, 701 F.3d 458, 464 (5th Cir. 2012) (quoting *Evanston Ins. Co. v. Jimco, Inc.*, 844 F.2d 1185, 1192 (5th Cir. 1988))

[14] *Black Sea Inv. Ltd v. United Heritage Corp.*, 204 F.3d 647, 651 (5th Cir. 2000).

[15] *Id.*

[16] *Bates v. Van Buren Tp.*, 122 F. App'x 803, 807 (6th Cir. 2004) (citing *PaineWebber, Inc. v. Cohen*, 276 F.3d 197, 207–08 (6th Cir. 2001).

[17] *Id.* at 808 (6th Cir. 2004)

[18] *Freed v. J.P. Morgan Chase Bank, N.A.*, 756 F.3d 1013, 1022 (7th Cir. 2014) (quoting *Tyrer v. City of S. Beloit, Ill.*, 456 F.3d 744, 756 (7th Cir. 2006)).

[19] *Id.*

[20] *Id.* at 1021.

[21] *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 851 (7th Cir. 2002).

[22] *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 842 (9th Cir. 2017).

[\[23\]](#) *Id.* at 841.

[\[24\]](#) *Coopers & Lybrand v. Sun-Diamond Growers of CA*, 912 F.2d 1135, 1138 (9th Cir. 1990).

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