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**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

**GREAT DIVIDE INSURANCE
COMPANY,**

Plaintiff,

vs.

**BEAR MOUNTAIN LODGE, LLC;
MERRILL M. MCGAHAN; LAURI B.
JOHNSON; MERRILL MARIE
MCGAHAN, et al.,**

Defendants.

**3:15-CV-00189 JWS
ORDER AND OPINION
[Re: Motion at docket 65]**

I. MOTION PRESENTED

At docket 65, Defendants Rediske Family Limited Partnership and JB Leasing Company, LLC (collectively Rediske Family Defendants) move for an order staying the declaratory judgment action brought by Plaintiff Great Divide Insurance Company (“Great Divide”). Defendants Bear Mountain Lodge, LLC; Merrill M. McGahan; Lauri B. Johnson; and Merrill Marie McGahan (collectively “BML”) filed a conditional non-opposition at docket 67. Great Divide partially opposes the motion at docket 75. Rediske Family Defendants reply at docket 76. Oral argument was heard on May 9, 2016.

1 **II. BACKGROUND**

2 On July 7, 2013, Walter Rediske, owner and chief pilot of Rediske Air, LLC
3 (“Rediske Air”) was transporting guests in a deHavilland DHC-3 Otter aircraft to the
4 Bear Mountain Lodge when the plane crashed following its takeoff from the Soldotna
5 Airport. Walter Rediske and all of the passengers died in the crash. The survivors and
6 estates of the deceased filed various lawsuits related to the crash. They filed one
7 lawsuit in the District of Alaska against Rediske Air, Rediske Family Defendants, and
8 the estate of Walter Rediske. They filed a separate lawsuit in the District of Alaska
9 against BML and other companies that allegedly modified or provided parts to the
10 aircraft involved in the crash. One of the companies then filed a third-party claim
11 against Rediske Air, Rediske Family Defendants, and the estate of Walter Rediske. In
12 a third and separate lawsuit brought in the District of Alaska, the estate of Walter
13 Rediske sued BML and Rediske Family Defendants. They also filed a parallel lawsuit in
14 state court. The three District of Alaska cases have been consolidated. The parties
15 have not informed the court as to the status of the state court case.

16 Bear Mountain Lodge, LLC is named as the insured on a Great Divide insurance
17 policy that was in effect at the time of the crash. Defendants Merrill M. McGahan, Lauri
18 B. Johnson, and Merrill Marie McGahan are the owners of Bear Mountain Lodge, LLC,
19 and, as such, are potential additional insureds under the policy. BML, through its
20 attorney, reported the litigation to Great Divide. Great Divide sent BML’s attorney a
21 reservation-of-rights letter. The letter explained Great Divide’s position that provisions
22 in BML’s insurance policy may exclude coverage for the claims arising from the airplane
23 crash. In addition, the letter explained that Great Divide would pay the attorneys’ fees
24 and costs BML incurred in the defense of those claims as to which Great Divide had
25 reserved its rights. Two months later, Great Divide filed a complaint for declaratory
26 judgment, asking that the court determine its obligations under BML’s insurance policy.
27 Specifically, Great Divide contends that there are three exclusions in the policy that
28 disclaim coverage for the accident: 1) the “Aircraft Exclusion”; 2) the “Designated

1 Operations Exclusion”; and 3) the “Contractors Exclusion.” BML filed a motion for
2 summary judgment, asking the court to find the three exclusions inapplicable and hold
3 Great Divide liable for coverage under the policy. While the motion for summary
4 judgment was pending, Rediske Family Defendants moved to stay the declaratory
5 judgment action. BML does not oppose a stay, provided Great Divide continues to
6 provide a defense under a reservation of rights. Great Divide has acquiesced in the
7 request to stay proceedings concerning the Aircraft Exclusion and the Designated
8 Operations Exclusion, but contends that the court should not stay proceedings relating
9 to the Contractors Exclusion.

10 **III. STANDARD OF REVIEW**

11 The Declaratory Judgment Act requires that a declaratory judgment action
12 present an actual case or controversy under Article III of the Constitution and be
13 consistent with statutes governing the jurisdiction of federal courts.¹ “If the suit passes
14 constitutional and statutory muster, the district court must also be satisfied that
15 entertaining the action is appropriate.”² Such a determination is discretionary and
16 based on prudential considerations. The prudential considerations are as follows:

- 17 (1) Avoiding the needless determination of state law issues;
- 18 (2) Discouraging the filing of declaratory actions as a means of forum shopping;
- 19 (3) Avoiding duplicative litigation;
- 20 (4) Resolving all aspects of the controversy in a single proceeding if possible;
- 21 (5) Avoiding intervention unless the declaratory action will serve a useful purpose
22 in clarifying the legal relations at issue;
- 23 (6) Avoiding procedural fencing or permitting one party to obtain an unjust res
24 judicata advantage at the expense of the other;
- 25 (7) Avoiding entanglement between the federal and state court systems; and

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27 ¹*Gov’t Employees Ins. Co. v. Dizon*, 133 F.3d 1220, 1222-23 (9th Cir. 1998).

28 ²*Id.* at 1223.

1 (8) Avoiding jeopardizing the convenience of the parties.³

2 **IV. DISCUSSION**

3 The parties agree that only some of the eight factors mentioned above are
4 relevant to the court's decision here. Each side argues that factors 3 (duplicative
5 litigation), 4 (single proceeding), and 6 (res judicata) are relevant and favor its position.
6 In addition, Great Divide asserts that factor 5 weighs against a stay because the court's
7 decision on the Contractors Exclusion could resolve the coverage issue and thus clarify
8 the legal relations in the underlying litigation between Great Divide and BML.

9 **A. Duplicative Litigation/Multiple Proceedings**

10 Rediske Family Defendants argue that a stay is warranted because the factual
11 overlap between the underlying tort litigation and the coverage litigation will result in
12 duplicative and costly efforts. The fact that there is an underlying tort case that
13 involves the same fact pattern as the insurer's declaratory judgment action, and
14 therefore has the potential for duplicative discovery, does not automatically bar
15 declaratory relief.⁴ This principle holds true even if the resolution of the coverage
16 dispute and the underlying tort dispute turns on a common factual inquiry, as long as
17 the actual questions to be determined remain distinct between the coverage action and
18 the tort action.⁵ For example, *Provident Tradesmens Bank & Trust Co. v. Patterson*⁶
19 was a declaratory judgment action to determine insurance coverage. In that case, an
20 insured car owner had loaned his car to another driver who proceeded to collide the
21 loaned car into a truck. The owner of the car was sued for the damages resulting from
22 the accident. The Supreme Court explained that both the coverage action and the tort

24 ³*Nat'l Chiropractic Mut. Ins. Co. v. Doe*, 23 F. Supp. 2d 1109, 1115 (D. Alaska
25 1998).

26 ⁴*Cont'l Cas. Co. v. Coastal Sav. Bank*, 977 F.2d 734, 737-38 (2d Cir. 1992);

27 ⁵*Id.*; *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 127-28 (1968).

28 ⁶390 U.S. 102 (1968).

1 action would necessarily address what the owner said to the driver when he gave him
2 the keys, but that the tort suit turned on whether the conversation made the driver an
3 agent of the owner while the coverage action concerned only whether the driver had
4 permission to use the car.⁷ Consequently, the Court held that the district court properly
5 exercised jurisdiction over the declaratory judgment action.⁸

6 Another example is found in *Standard Fire Insurance Co. v. Gordon*.⁹ The tort
7 action involved a renter who sued an insured property owner for negligent maintenance
8 after falling down stairs at the rental premises. The insurer filed a declaratory judgment
9 action to disclaim coverage. The court retained jurisdiction over the declaratory
10 judgment action despite the fact that both cases involved facts related to the insured's
11 interactions with the rented premises. It held that the tort suit turned on the insured's
12 maintenance of the premises while the coverage action turned on whether the insured
13 intended to sell, reside at, or rent the premises. The renter and owner argued that
14 whether the owner failed to make repairs to the premises could impact the court's
15 analysis as to whether the owner intended to reside at the premises. The court,
16 however, disagreed, noting that "[b]ecause it is unclear what impact, if any, [the
17 owner's] failure to make repairs may have on [the court's] determination of coverage, [it]
18 is not the sort of common factual question justifying dismissal."¹⁰

19 Both the underlying tort action and the Contractors Exclusion at issue in this
20 declaratory judgment action implicate questions related to a common point of fact: the
21 relationship between BML and Rediske Air. However, like the cases discussed above,
22 the legal and factual questions to be determined in each action are sufficiently distinct.
23 The issue in the underlying litigation turns on the amount of control BML had over

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25 ⁷*Id.* at 127.

26 ⁸*Id.* at 127-28.

27 ⁹376 F. Supp. 2d 218 (D.R.I. 2008).

28 ¹⁰*Id.* at 229.

1 Rediske Air and the flight, while the factual issue that would be resolved in relation to
2 the Contractors Exclusion, assuming the court rejects BML's limited definition of the
3 term "contractor," is whether there was indeed a contract between the two parties.¹¹

4 This case is unlike *National Chiropractic Mutual Insurance Co. v. Doe*¹² relied on
5 by Rediske Family Defendants. "In that case, the insured's liability to his patient for
6 sexual assault or negligent treatment and the insured's right to coverage in view of [his
7 insurance] policy's intentional acts exclusion both turned on whether a sexual assault
8 had occurred."¹³ Here, in contrast, BML's liability in the tort action and its right to
9 coverage in light of the Contractors Exclusion do not turn on the exact same issue.
10 While the contract issue here might be relevant to the underlying tort litigation, it does
11 not answer the ultimate question of liability. Put another way, the court agrees with
12 Great Divide that the analysis of whether there was a contract between BML and
13 Rediske Air turns on straightforward principles of contract law that do not implicate the
14 agency issues upon which BML's liability, if any, to the tort plaintiffs would turn.

15 Rediske Family Defendants concede that the issue of control is legally distinct
16 from the contract issue, but stress that the answer to each issue will require so much
17 factual overlap that a stay is required to avoid costly duplicative discovery efforts. It is
18 unclear at this juncture whether discovery will even be required in the event the court
19 denies BML's motion for summary judgment on the issue of coverage under the
20 Contractors Exclusion. Great Divide contends that the court will be able to determine
21 whether the exclusion applies based on the limited set of undisputed facts already
22 presented to the court because the factual inquiry simply turns on whether there was an
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25 ¹¹Under Alaska law, contract formation requires an offer with essential terms,
26 unequivocal acceptance, consideration, and an intent to be bound. *Davis v. Dykman*, 938 P.2d
1002, 1006 (Alaska 1997).

27 ¹²23 F. Supp. 2d 1109 (D. Alaska 1998).

28 ¹³Doc. 75 at p. 16.

1 offer, acceptance, and consideration.¹⁴ Based on the pending summary judgment
2 motion brought by BML, which Rediske Family Defendants did not join or respond to, it
3 indeed appears likely that the court will be able to determine whether the Contractors
4 Exclusion applies based on a limited set of undisputed facts in the record. This
5 supports the conclusion that there will be no substantial duplication of or interference
6 with ongoing discovery in the underlying litigation. Even if there are disputed material
7 facts at issue that require further discovery, the court is persuaded by Great Divide's
8 argument that resolution of the contract question is limited in factual scope. The court
9 will not need to resolve specific terms of the contract, such as how much control over
10 the flight, if any, BML retained.

11 **B. Collateral Estoppel**

12 Rediske Family argues that the factual overlap between the tort litigation and the
13 coverage litigation is not only unnecessarily duplicative, but it also raises collateral
14 estoppel issues. They argue that any legal or factual finding the court makes in relation
15 to this coverage action will preclude them from disputing that finding later in the tort
16 litigation. Specifically, they point out that in the underlying tort litigation, BML maintains
17 that it did not contract with Rediske Air but instead merely purchased tickets on the
18 passengers' behalf. Rediske Family Defendants assert that because of this factual
19 overlap, if the court concludes there was a contract, they or BML could then be
20 estopped from maintaining such a position in the tort action. This argument, however,
21 conflates the issue of control with the issue of a contract. Finding that BML had a
22 contract with Rediske Air does not determine what type of contract it was, nor does it
23 determine the amount of control it had over Rediske Air. That is, such a finding by the
24 court would not determine whether Rediske Air could be considered an employee of

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26 ¹⁴The court notes that Great Divide merely opposed BML's request for summary
27 judgment and did not file a cross motion. In the event the court were to deny BML's motion for
28 summary judgment, Great Divide should move for summary judgment in its favor. If Great
Divide does not move for summary judgment, the court may need to reconsider the stay issue.

1 insurance policy apply so as to preclude coverage in the underlying tort litigation, but
2 the court will determine whether the Contractors Exclusion applies.

3 DATED this 12th day of May 2016.

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5 /s/ JOHN W. SEDWICK
6 SENIOR UNITED STATES DISTRICT JUDGE
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