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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOPA INSURANCE COMPANY,

Plaintiff,

v.

AMRINDER SINGH, et al.,

Defendants.

CASE NO. 1:11-cv-01573-MJS (PC)

ORDER GRANTING DEFENDANT'S
APPLICATION FOR DISBURSEMENT OF
INTERPLED FUNDS AND GRANTING
PLAINTIFF LEAVE TO FILE AN AMENDED
COMPLAINT

_____ /

I. INTRODUCTION

A. The Accident, The Insurance, And The Claims

This interpleader action arose out of a July 23, 2009, multi-vehicle collision on a Virginia interstate highway. Apparently all involved have concluded that the accident was caused, at least in substantial part, by Defendant Pawandeep Singh's negligent operation of a tractor trailer.¹

The truck Pawandeep Singh was driving was owned by his then-passenger,

¹ Liability issues are not presently before this Court and are not addressed or resolved here.

1 Amrinder Singh. Amrinder Singh was insured at the time under a one million dollar
2 Commercial Automobile Liability insurance policy (TLH 002227-00) issued by Plaintiff Topa
3 Insurance Company.

4 Injured parties asserted claims and/or filed suit in various jurisdictions to recover for
5 property loss, personal injury, and wrongful death suffered in the accident, and they have
6 sought coverage therefore under the Topa policy. The claims substantially exceed,
7 multiple times over, the value of the policy.

8
9 **B. The Interpleader Action**

10 Because the claims against the Topa policy exceeded the amount of coverage
11 provided, Topa initiated this action in this Court on September 15, 2011, and sought,
12 among other relief, a judicial determination: (1) of the amount each of the Defendants was
13 entitled to share in the policy; (2) enjoining the Defendants from initiating or pursuing any
14 other judicial proceedings affecting the rights and obligations between and among them
15 and Topa; and (3) discharging Topa's obligations under the policy. (ECF No. 1.)

16
17 Topa named as Defendants in the action:

18 Amrinder and Pawandeep Singh;

19 Linton and Jan Weeks;

20 Jorge and Rebecca Chavero;

21 DBi Services, LLC;

22 Royal Freight, LP;

23 Progressive Insurance Company;

24 Hiscox Insurance Company;

25 Northland Insurance Company;

1 Truck Service, Inc.; and,
2 Does one through fifty.

3 On September 22, 2011, Topa deposited the full amount of the policy proceeds into
4 the Registry of this Court.

5
6 **C. Agreed Distribution**

7 Reportedly, all claims for indemnity from the Topa policy arising out of the July 23,
8 2009, accident have now been settled; written agreements have been exchanged and all
9 that is necessary to finally close those claims is to disburse the amounts agreed upon out
10 of the funds deposited in the registry of the Court.

11 Specifically, direct negotiations among the parties led to a collective agreement that
12 the interpled funds should be distributed to or for the benefit of the following-named
13 claimants in the amounts indicated below:
14

- 15 1. Royal Freight, Inc – \$20,000.00
- 16 2. DBi Services, LLC – \$10,000.00
- 17 3. Jorge and Rebecca Chavero – \$7,500.00
- 18 4. Hiscox Insurance Company – \$3,500.00
- 19 5. Linton and Jan Weeks – \$959,000.00 plus all interest which

20 accumulates on the interpled funds while on deposit with the Registry of the Court.
21

22 **D. Remaining Dispute**

23 Notwithstanding the above agreements, the Weeks continue to pursue litigation
24 against Amrinder Singh and related parties, including 3SJ Transportation, LLC, in San
25 Joaquin County, California, Superior Court case number 39-2010-00243717-CU-PA-STK.
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1 Reportedly, 3SJ tendered defense of that action to Topa, Topa accepted the tender and
2 has been providing, and agrees to continue to provide even after distribution of the policy
3 proceeds, a defense for 3SJ in that state court action.

4
5 Topa has, however, sought 3SJ's agreement to accept and be bound by the
6 allocation and distribution of policy proceeds as described here. 3SJ has declined to so
7 agree. Topa believes that 3SJ may claim that distribution of the policy proceeds without
8 securing a discharge of 3SJ's liability to the Weeks may constitute a breach of Topa's
9 obligations to 3SJ as an additional insured under the policy.

10 **E. Proposed Complaint Amendment**

11 Because of its concerns that 3SJ might assert a further claim against Topa,
12 notwithstanding Topa's payment of the full amount of the policy and discharge of Topa in
13 this case, Topa now seeks leave to amend the Complaint and bring 3SJ into this action as
14 a Defendant.² (ECF Nos. 74, 86.) The Weeks object. (ECF No. 89.) The parties have
15 submitted competing Orders denying the motion to amend³, providing for disbursement of
16 the interpled funds and proposing competing language as to the effect of the Order.⁴
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19
20 ² Topa originally sought to bring 3SJ and Intrade Industries, Inc., a similarly situated company
21 with similar exposure to the Singhs and similar claims against Topa, into this action via stipulation with
22 both also stipulating to be bound by this Court's Orders. (ECF No. 74.) Intrade has so agreed as between
it and Topa (ECF No. 91), and Topa no longer seeks formally to bring Intrade into this action. Efforts to
persuade 3SJ to act similarly have failed.

23 ³ No separate, specifically identified written motion to amend has been filed. However, the
24 parties and the Court agreed in a July 24, 2012, Status Conference, that all would proceed on the oral
request as if a formal written motion had been filed. That agreement is reflected in the parties competing
proposed Orders (ECFs No. 98-1 at 1:21-22 and 98-2 at 1:25-2:1.) The Court proceeds accordingly.

25 ⁴ As noted, Topa has asked this Court to grant leave to amend and bring 3SJ in as a Defendant.
26 (ECF Nos. 74, 86.) The Weeks oppose granting leave to amend. (ECF No. 89.) The respective briefs on
27 this issue came in response to the Court's request for briefing on the effect of threatened third party claims
against Topa. (ECF No. 84.)

1 **II. ISSUES**

2 The issues before this Court at this time are:

3 1. Shall Plaintiff, Topa Insurance Company, be granted leave to amend to
4 add 3SJ Transportation, LLC, as a Defendant?
5

6 2. Shall the interpled funds on deposit in the Registry of this Court be
7 disbursed at this time in the amounts and to the parties as agreed?

8 3. Shall the language of the Order purport to address Topa's obligations to
9 non-parties?

10 No one disputes that interpleader was appropriately initiated and pursued in this
11 Court. The Court finds that the diversity, amount in controversy, and venue requirements
12 of 28 U.S.C. §§ 1335 and 1397 have been met.
13

14 As noted, no party objects to the proposed disbursement of interpled funds.
15 However, upon such disbursement, Topa seeks a determination from this Court that Topa
16 has discharged its obligations to all of its insureds under the policy; Topa wants 3SJ as a
17 party to the action so that it too will be bound by the distribution and discharge hereunder
18 and be foreclosed from challenging the agreed disbursement, or more likely, its effect on
19 3SJ and 3SJ's claims against Topa. To be even more precise, 3SJ apparently has
20 objected to Topa interpleading the policy limits and seeking discharge without first securing
21 3SJ's release from its potential liability to the Weeks and possibly others in the state court
22 litigation. (ECF No. 92 at 4:5-6.) Without specifically objecting to the allocation of the policy
23 proceeds, 3SJ reportedly wants to reserve the right to claim that distribution independent
24 of 3SJ's release breaches the duty of good faith and fair dealing Topa owes to 3SJ. (ECF
25 Nos. 89 at 4:24 - 5:11 and ECF No. 92 at 4:17-18.)
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1 The issues thus boil down to whether disbursement should be delayed to allow 3SJ
2 to be brought into the case and be given an opportunity to challenge the disbursement and,
3 if not, what shall be the scope and extent of the Court's disbursement and discharge order.
4

5 **III. APPLICABLE LAW**

6 **A. Motions to Amend**

7 All recognize that motions to amend are to be granted with great liberality. Fed. R.
8 Civ. P. 15(a)(2). Generally, leave to amend will be granted absent a showing of undue
9 prejudice, bad faith, or dilatory purpose on the part of the moving party. Foman v. Davis,
10 371 U.S. 178, 182 (1962). Here there is no claim of bad faith or undue prejudice except
11 insofar as amendment will delay the disbursement of the interpled funds. Delay as may
12 be occasioned by full litigation of the issues generally is not considered prejudicial delay.
13 See, e.g., Middle Atlantic Utilities Co. v. S.M.W. Development Corp., 392 F.2d 380, 384-86
14 (2d Cir. 1968); Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999).
15

16 On the other hand, leave to amend may be denied if amendment is futile. Saul v.
17 United States, 928 F. 2d 829, 843 (9th Cir. 1991). "Futility" normally is examined with a
18 view towards determining whether any set of facts might exist which could support the
19 amendment. Miller v. Rykoff-Sexton, Inc., 845 F. 2d 209, 214 (9th Cir. 1988). Here the
20 Court will examine the futility issue from the slightly different perspective of whether the
21 party sought to be brought in by the amendment is a proper party to this interpleader
22 action; if so, whether Topa could and should secure in this action the relief for which it
23 wants 3SJ added; and whether the funds may and should be distributed at this time without
24 regard to whether 3SJ is brought in or not.
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1 **B. Interpleader**

2 This action, brought by a liability insurance company faced with multiple claims
3 against a negligent insured in amounts multiple times greater than the liability policy
4 covering the negligence, is a common and recognized basis for interpleader. See, e.g.,
5 State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523 (1967). However, such action is not
6 the be all to end all; the court in which the interpleader is filed cannot adjudicate the injured
7 parties' claims against other torfeasors nor independent claims against the insurance
8 company. The court can only determine how to distribute the interpled funds among the
9 various claimants. Id. at 535-37. Interpleader is not a "bill of peace". General Atomic Co.
10 v. Duke Power Co., 553 F. 2d 53, 57 (10th Cir. 1977).

11
12 Since liability insurance companies owe their insureds a duty to defend and
13 indemnify, interpleading the policy limits does not relieve the carrier of the duty to defend.
14 Mt. Hawley Ins. Co. v. Federal Savings & Loan Insurance Corp., 695 F.Supp. 469, 474
15 (C.D. Cal. 1987)

16
17 **IV. THE PARTIES' RESPECTIVE POSITIONS AND PROPOSED ORDERS**

18 **A. Topa**

19 Topa seeks injunctive relief precluding anyone from initiating or pursuing in any
20 court further claim against the interpled funds or directly against Topa. The court in an
21 interpleader action may permanently enjoin the claimants in an appropriate manner and
22 grant other adequate relief to the stakeholder. Francis I. du Pont & Co. v. Sheen, 324 F.2d
23 3, 4 (3rd Cir. 1963) (citing Dugas v. American Surety Co., 300 U.S. 414 (1937)).

24
25 More specifically, Topa seeks leave to add 3SJ to "ensure that any order
26 discharging Topa binds all claimants or potential claimants to the implied [sic] policy limits."
27

1 (ECF No. 86 at 1:26-27.) Topa notes that the primary purpose of interpleader is to protect
2 the interpleading party from a multiplicity of suits. (Id. at 5:20-22 citing Aetna Life Ins. Co.
3 v. Bayona, 223 F.3d 1030, 1034 (9th Cir. 2000).)

4 Topa notes that 3SJ is not a true claimant to the funds. However, 3SJ wants the
5 claimants to release 3SJ as a condition of distribution of the policy limits. Topa fears that
6 if the funds are disbursed without 3SJ being a party "there is a real chance that 3SJ will
7 make an after-the-fact challenge" to the disbursement. (Id. at 2:6-7.) Topa contends that
8 3SJ may argue that it was prejudiced by being denied the opportunity to object to the
9 proposed allocation and disbursement. (Id. at 2:18-20.) Plaintiff argues "[t]o pay the funds
10 out now is to risk a separate action undoing the proposed allocated disbursement of
11 funds." (Id. at 6:5-6.)

12 Topa acknowledges the lack of authority directly supporting its position. It relies
13 instead on the recognized liberality with which amendment is to be permitted and, implicitly,
14 the reasonableness of its desire to put an end to all litigation over its policy obligations,
15 particularly where, as here, the only prejudice would be delay in distribution of the policy
16 proceeds to the Weeks and other claimants. As noted, exposure to additional costs and
17 delay inherent in litigation if amendment is allowed is not sufficient alone to defeat a motion
18 to amend. Middle Atlantic Utilities Co., 392 F.2d at 386.

19 Topa has proposed the following order be issued by the Court if it denies leave to
20 amend as requested:

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24 Having found this interpleader action to be proper under 28 U.S.C. § 1335,
25 and, in the alternative, F.R.C.P. 22, and having ordered the discharge of
26 Topa's indemnity obligation to all of its insureds under policy no. TLH
27 002227-00 and disbursement of the interpleader funds as set forth above,
the Court will dismiss this case in its entirety upon certification to this Court

1 by the Finance Department of this Court that the disbursement of the
2 interpleader funds has been accomplished in accordance with this Order.

3 (ECF No. 98-1 at 4:3-8.)

4 **B. The Weeks**

5 The Weeks note that by interpleading the policy limits without asserting a stake in
6 them, Topa expressly disclaimed any interest in the proceeds. (ECF No. 89 at 5.) They
7 argue that Topa's typical commercial auto liability insurance policy obligated Topa to pay
8 "on behalf of its insured but not to its insured" sums for which the insured becomes liable
9 because of a covered loss. (Id. at 3:2-4.) When Topa interpled the policy limits, it framed
10 the issues and defined the field of persons or entities whose claims were to be adjudicated
11 by the Court. (Id. at 3:13-15.)

13 Counsel for the Weeks argues that allowing Topa to file an amended complaint
14 naming 3SJ as a Defendant would enlarge the interpleader action beyond the scope
15 permitted by 28 U.S.C. § 1335. According to the Weeks, citing 28 U.S.C. § 1335 and
16 Gaines v. Sunray Oil Company, 539 F.2d 1136, 1141 (8th Cir. 1976), a proper party
17 defendant to an interpleader action must be an adverse claimant to the interpled fund.
18 (ECF No. 94 at 3:9-11.)

20 Citing to a leading treatise on federal procedure, the Weeks argue that interpleader
21 does not allow one to bring into the action parties or claims not related directly to
22 disposition of the interpled res of the action:

23
24 Such interpleader does not solve all the problems of multi-party litigation
25 arising from a mass tort. The court cannot adjudicate the injured parties'
26 claims against other tortfeasors (nor independent claims against the
27 insurance company). The court can only determine how to distribute the
"stake" among the various claimants.

1 (Id. at 2:5-13 (citations and italics omitted).)

2 In summary, the Weeks argue, interpleader actions are not to serve as the forum
3 in which other grievances, such as those by claimants against the interpleading party, may
4 also be adjudicated.

5 **V. ANALYSIS**

6 **A. Disbursement of Interpled Funds**

7
8 The Court is unable to identify any reason to delay disbursement of the interpled
9 funds in the manner agreed by all those having any remaining claim to them.

10 Topa initiated this action against those it believed might have claims to the liability
11 coverage provided by Topa's policy. It alleged that there was dispute among the various
12 Defendants as to who was entitled to what share. It alleged that the total of all claims
13 exceeded the coverage provided by the policy. It alleged that it could not determine who
14 was entitled to what. It asked the Court to order all Defendants to interplead their claims,
15 to enjoin them from instituting or prosecuting any other proceedings anywhere "affecting
16 the rights and obligations as between TOPA and the DEFENDANTS," and to "issue an
17 order discharging and releasing TOPA from any further obligation under the TOPA
18 POLICY, as TOPA claims no further interest in the policy limits." (ECF No. 1 at 8:17-21.)

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21 As the case progressed, the named and served parties resolved the conflicting
22 claims among themselves and with Topa, including claims by Topa for attorney fees and
23 claims that Topa should pay interest on the policy limits for a period prior to the date on
24 which the funds were deposited into the Registry of the Court. As a result, all parties Topa
25 claims have any possible right to a share of the Topa policy proceeds have determined that
26 those proceeds may be distributed in the manner provided in Section I.C., above, and as
27

1 more specifically provided in the proposed orders submitted by both Topa and the Weeks.
2 (ECF No. 98.)

3 Inasmuch as Topa and the Weeks have represented to the Court and the other
4 parties to this action that all parties with an interest in the policy have agreed on the
5 allocation and payment of those proceeds such that there is no longer any other person
6 or entity with a competing interest in the proceeds, and Topa wishes to have the funds
7 paid out pursuant to that agreement, there is no reason to delay that distribution of those
8 funds.
9

10 Nowhere does Topa argue that the funds should not be paid out. It merely wants
11 3SJ brought into the action before the Court issues its Order adopting the proposed
12 distribution so that 3SJ will be a party bound by that Order. It seeks to do so not because
13 3SJ is making a claim to the funds: "3SJ is not a claimant and is not expected to file a
14 cross-claim against the defendants" in this case. (ECF No. 92 at 4 n. 2.) Rather Topa is
15 concerned 3SJ may claim Topa somehow breached its obligation to 3SJ by agreeing to
16 distribute the policy proceeds while the Weeks are still pursuing claims against 3SJ in the
17 above-referenced state court action.
18

19 As discussed below, the Court will not here determine whether such potential
20 disputes between Topa and 3SJ can and should be brought before this Court in this action.
21 However, whether they can or not, the Court has seen no reason to conclude that such
22 disputes or their resolution could have any effect whatsoever on the distribution of the
23 interpled policy proceeds. That distribution has been agreed to by all who have a claim in
24 or to those funds. 3SJ has no interest in those funds, no claim to a share of them, and no
25 right as against the distributees to complain about the agreed distribution. The Court
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1 foresees nothing that 3SJ might or could do, or that Topa might or could do, in response
2 to 3SJ's claims, that could alter what already has been agreed to among the
3 claimants/defendants and Topa. Therefore, there is no reason to delay that distribution
4 while Topa and 3SJ resolve whatever differences they have remaining between them.

5 In summary, while there may, or may not, be some benefit to Topa in having 3SJ
6 made a party to this action, there is no reason to delay the distribution while attempts are
7 made to bring 3SJ in. Accordingly, the Court will order distribution as described in the
8 proposed orders of Topa and the Weeks. The distribution will be delayed until a date
9 fourteen days after the date of this Order to give all parties an opportunity to seek
10 reconsideration or extraordinary relief before the funds are released.

11
12 **B. Motion to Amend**

13 It is not clear that naming 3SJ and bringing it into this action as a Defendant will
14 enable the Court to address and resolve anticipated disputes between Topa and 3SJ.
15 However, the Court can not now say that doing so would be futile given the great liberality
16 with which leave to amend is to be granted. Therefore the Court will err in the direction of
17 allowing the amendment, if Topa still wishes to seek it, and give 3SJ an opportunity to
18 appear and address the issue as to whether it is a proper party to this action.

19
20 **VI. ORDER**

21 For the reasons set forth above and good cause appearing, it is hereby ORDERED
22 as follows:

- 23
24 1. The application of Plaintiff Topa Insurance Company for leave to file a first
25 amended complaint in this action and name 3SJ Transportation, LLC, as an
26 additional defendant is GRANTED.

1 2. The application of Defendants Linton S. Weeks and Jan T. Weeks for
2 disbursement of the one million dollars deposited with the Registry of this
3 Court on September 22, 2011, by Plaintiff Topa Insurance Company,
4 together with all accrued interest thereon, is GRANTED.

5 3. The Finance Department of this Court is hereby directed to disburse said
6 deposited funds, including the accrued interest thereon, to the remaining
7 Defendants in this action or their representatives, as follows, fourteen days
8 from the date of this Order:

9 a. The sum of \$20,000, in a check made payable to "Chamblee, Ryan,
10 Kershaw & Anderson, P.C., as trustee for Royal Freight, LP," mailed
11 to: KC Ashmore, Esq., Chamblee, Ryan, Kershaw & Anderson, P.C.,
12 2777 North Stemmons Freeway, Suite 1157, Dallas, Texas 75207;

13 b. The sum of \$10,000, in a check made payable to "DBi Services, LLC,"
14 mailed to: Joseph A. Whitecavage, Esq., LeClair Ryan LLP, 44
15 Montgomery Street, 18th Floor, San Francisco, California 94104;

16 c. The sum of \$7,500, in a check made payable to "Jorge Adrian
17 Chavero and Rebecca Chavero and Steven P. Hammond, their
18 attorney," mailed to Steven P. Hammond, Esq., HammondTownsend,
19 1569 Jefferson Highway, Suite 101, Fishersville, Virginia 22939;

20 d. The sum of \$3,500, in a check made payable to "Hiscox Insurance
21 Company," mailed to Mr. Claudio Carrera, York Risk Service Group,
22 Post Office Box 5245, Parsippany, New Jersey 07054-6453; and

23 e. The sum of \$959,000, together with all such interest as shall have
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1 accrued upon said \$1 million fund while on deposit with this Court
2 from the time of such deposit to the time of disbursement, in a check
3 made payable to "Butler, Wooten & Fryhofer, LLP, as trustees for
4 Linton Stone Weeks and Jan Taylor Weeks", and mailed to Butler,
5 Wooten & Fryhofer, LLP, Post Office Box 2766, Columbus, Georgia
6 31902.
7

- 8 4. Upon certification to this Court that the funds deposited in the Registry of this
9 Court have been distributed in accordance with the terms of this Order,
10 Plaintiff Topa Insurance Company shall be discharged from its indemnity
11 obligations to its insureds under Topa Commercial Liability Insurance policy
12 No. TLH 002227-00 as a result of injuries sustained by them as a result of
13 the motor vehicle accident giving rise to this action.
14

15
16 IT IS SO ORDERED.

17
18 Dated: October 3, 2012

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE