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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ST PAUL FIRE AND MARINE  
INSURANCE COMPANY, NEW YORK  
MARINE AND GENERAL  
INSURANCE COMPANY,

Plaintiffs,

v.

KINSALE INSURANCE COMPANY,

Defendant.

TRC OPERATING COMPANY, INC.,  
TRC CYPRESS GROUP, LLC.

Real Parties in Interest

Case No. 1:20-cv-00967-JLT-CDB

**ORDER GRANTING IN PART  
PLAINTIFFS' MOTIONS TO LIFT  
STAY**

(Docs. 57, 58)

Before the Court are New York Marine and General Insurance Company (NY Marine) and St. Paul Fire and Marine Insurance Company (St. Paul), (collectively Plaintiffs) motions to lift stay. (Docs. 57, 58). Defendant Kinsale Insurance Company (Kinsale) filed is opposition on February 1, 2023. (Doc. 59). On February 10, 2023, St. Paul and NY Marine each filed a reply to Kinsale's opposition. (Docs. 62, 63). The Court held a hearing on the motions on February 23, 2023. (Doc. 64). As set forth in more detail below, the Court concludes that the stay should be lifted for the limited purpose of permitting the parties to conduct discovery relating to and file dispositive motions on the discrete question of whether and the extent to which Kinsale owes a

1 duty to defend the TRC Entities. Accordingly, the Court grants in part Plaintiffs’ motions to lift  
2 stay.

### 3 BACKGROUND

4 This consolidated action is a dispute between three insurance companies over their  
5 coverage of legal defense costs of TRC Operating Company, Inc. and TRC Cypress Group, LLC  
6 (the TRC Entities). In 2014, the TRC Entities commenced a state court suit against Chevron  
7 USA, Inc. (Chevron), captioned *TRC Operating Co. v. Chevron, Kern County*, Case No. S-1500-  
8 CV-282520 DRL (the Underlying Matter) in which the TRC Entities seek damages resulting from  
9 Chevron’s alleged conduct and operations on its property. (Complaint, Doc. 1, ¶ 6). The  
10 Underlying Matter includes Chevron’s crossclaims against the TRC Entities in which Chevron  
11 alleges that the TRC Entities’ conduct on their property, including their use of cyclic steaming  
12 methods to harvest and extract oil, caused physical injury to Chevron’s property. (*Id.*, ¶ 7)

13 Plaintiff insurers have and currently are paying for the TRC Entities’ defense of the  
14 Underlying Matter and complain that Kinsale is not fulfilling its duty to defend TRC. In their  
15 complaint, Plaintiffs raise claims against Kinsale for declaratory relief, equitable contribution,  
16 equitable indemnity, and subrogation. (*Id.*) Kinsale maintains that it owes the TRC Entities no  
17 duty to defend and asserted 23 affirmative defenses in its answer to Plaintiffs’ complaint.  
18 (Answer, Doc, 6, ¶¶ 33-55). Among other things, Kinsale asserts that it is relieved of any duty to  
19 defend the TRC Entities in the Underlying Matter because of various policy exclusions. (*Id.*, ¶  
20 54). The substance of this defense is set forth in more detail in Kinsale’s disclaimer of coverage  
21 notice to TRC Operating Company, dated January 22, 2018. (Wagoner Declaration, Doc. 58-3, ¶  
22 15, Exhibit 4). In that letter, Kinsale asserts that there is no coverage because the loss alleged by  
23 Chevron (1) “was not reported within the 30 days required by the Policy,” and (2) is expressly  
24 excluded from coverage because it constitutes “subsidence.” (*Id.* Ex. 4, p. 9).

25 On November 11, 2021, the parties filed a stipulation seeking modification of the case  
26 management dates in which they reported to the Court that the Underlying Matter reached a jury  
27 verdict, but a motion for new trial was granted on October 26, 2021. (Doc. 23, p. 5). In their  
28 stipulation and supporting declaration, St. Paul and NY Marine represented that certain coverage

1 issues and the scope of damages in this action “will be materially affected” by the Underlying  
2 Matter. (Doc. 23, p. 6; Doc. 23-1, p. 7). Plaintiffs also represented that new discovery would  
3 need to be undertaken in this action after a potential new trial in the Underlying Matter. (*Id.*)

4 The parties proposed in their stipulation two alternative forms of relief: (1) extending all  
5 the case management dates to an undetermined date following the resolution of the appeal of the  
6 Underlying Matter; or (2) a 120-day extension of most of the case management dates. (Doc. 23, p.  
7 7). On November 12, 2021, the Court issued an order that stayed the case and ordered the parties  
8 to file a joint report detailing the status of the case and whether the stay should be lifted within  
9 120 days of the order and every 60 days thereafter. (Doc. 24).

10 On June 2, 2022, the parties filed a Joint Status Report. (Doc. 49). Plaintiffs reported that  
11 they believed that conditions had changed and the stay could be lifted because whether Kinsale  
12 owes a duty to defend the TRC Entities in this action does not depend on the facts developed in  
13 the Underlying Matter. Plaintiffs explained, “[f]or an insurer, the existence of a duty to defend  
14 turns not upon the ultimate adjudication of coverage under its policy of insurance, but upon those  
15 facts known by the insurer at the inception of a third party lawsuit,” citing *Montrose Chem. Corp.*  
16 *v. Superior Ct.*, 6 Cal.4th 287, 295 (1993) (*Montrose I*).

17 Following a status conference with the parties, on June 15, 2022, the Court entered an  
18 order declining to lift the stay but acknowledging that the parties could file additional briefing in  
19 support of any later motion. (Doc. 54). The Court’s decision to keep the stay in place was based  
20 in part on an inconsistency between Plaintiffs’ prior assertions that this case could not be litigated  
21 until the Underlying Matter was resolved and their later representations that the stay could be  
22 lifted to permit discovery relating to and briefing of a limited summary judgment motion. (*Id.* at  
23 6).

## 24 STANDARD OF LAW

25 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
26 control the disposition of the causes on its docket with economy of time and effort for itself, for  
27 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “The corollary to this  
28 power is the ability to lift a stay previously imposed.” *Boyle v. Cty. of Kern*, No. 1:03-cv-05162-

1 OWW-GSA, 2008 WL 220413, at \*5 (E.D. Cal. Jan. 25, 2008). In granting and lifting stays, a  
2 court must weigh “the length of the stay against the strength of the justification given for it.”  
3 *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). “If a stay is especially long or its term is  
4 indefinite, [courts] require a greater showing to justify it.” *Id.*

5 In considering whether to grant a stay, this court must weigh several factors, including  
6 “[1] the possible damage which may result from the granting of a stay, [2] the hardship or  
7 inequity which a party may suffer in being required to go forward, and [3] the orderly course of  
8 justice measured in terms of the simplifying or complicating of issues, proof, and questions of law  
9 which could be expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.  
10 1962) (citing *Landis*, 299 U.S. at 254–55). A stay may be warranted in deference to ongoing,  
11 parallel proceedings “regardless of whether the separate proceedings are ‘judicial, administrative,  
12 or arbitral in character, and does not require that the issues in such proceedings are necessarily  
13 controlling of the action before the court.’” *Scottsdale Indemnity Co. v. Yamada*, No. 1:18-cv-  
14 00801-DAD-EPG, 2019 WL 7601833, at \*3 (E.D. Cal. Jan. 10, 2019) (quoting *Leyva v. Certified*  
15 *Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979)).

16 While the *Landis* factors control a federal court’s consideration of whether to maintain a  
17 litigation stay, in the insurance context, federal courts take into account state law – including, in  
18 California, case law under *Montrose I* – to inform the *Landis* analysis. *E.g.*, *United Specialty Ins.*  
19 *Co. v. Bani Auto Grp., Inc.*, 2018 WL 52911992, \*4 (N.D. Cal. Oct. 23, 2018) (“California law  
20 can help inform the Court’s application of the *Landis* factors”).

## 21 DISCUSSION

22 The key question before the Court is whether, under *Landis*, the balance of equities  
23 weighs in favor of maintaining the stay imposed by the Court in November 2021 following the  
24 parties’ request to continue case management dates until after resolution of the Underlying Matter  
25 between the real parties in interest. The Court is mindful that where, as here, there is a pending  
26 proceeding that is independent of, but related to the federal lawsuit, the Court is within its  
27 discretion to impose and maintain a stay of the federal action pending resolution of the  
28 independent proceeding. *See Leyva*, 593 F.2d at 863. The independent proceeding need not be

1 controlling of the federal lawsuit to be considered related. *Id.* On the other hand, “when  
2 coverage questions do not turn on the facts to be litigated in an underlying action, an insurer has a  
3 right to obtain a judicial determination as to its obligation to insureds without waiting for  
4 resolution of that action.” *Gen. Ins. Co. of Am. V. INB Ins. Servs. Corp.*, 2018 WL 65992440, at  
5 \*3 (N.D. Cal. Dec. 14, 2018) (internal quotations and citation omitted).

6 The Court has given careful consideration to the parties’ arguments set forth in their briefs  
7 and during oral argument and taken note of the procedural trajectory of this litigation as well as  
8 the protracted course of proceedings (and anticipated lengthy appeal and prospect of a new trial)  
9 in the Underlying Matter. In light of this and having weighed the *Landis* factors, the Court  
10 concludes that the stay should be lifted for the limited purpose of permitting the parties to conduct  
11 discovery relating to and file dispositive motions on the discrete question of whether and the  
12 extent to which Kinsale owes a duty to defend the TRC Entities.

13 First, the Ninth Circuit has held that “being required to defend a suit, without more, does  
14 not constitute a ‘clear case of hardship or inequity’ within the meaning of *Landis*.” *Lockyer v.*  
15 *Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005). Kinsale does not argue that lifting the stay  
16 would cause it to suffer damage. Indeed, any harm Kinsale could suffer in connection with  
17 possibly over-contributing financially to the defense of the TRC Entities is remediable because it  
18 will retain recourse to recovering costs from any insurer that under-contributes. *See Colony Ins.*  
19 *Co. v. Temescal Rei, LLC*, No. 1:19-cv-01778-NONE-JLT, 2021 WL 535414, at \*5 (E.D. Cal.  
20 Feb. 12, 2021).

21 Second, and most importantly, the Court finds that the orderly administration of justice is  
22 best served by lifting the stay. *CMAX*, 300 F.2d at 268. Not only has the instant stay delayed this  
23 action for a protracted period of time in deference to the Underlying Matter, but also, the  
24 appellate proceedings involving the Underlying Matter are likely to take many more months –  
25 and possibly will be followed by a new trial.

26 With the benefit of the parties’ briefing and arguments, it appears the Court properly may  
27 lift the stay to permit limited proceedings that will not be affected by (or otherwise affect) the  
28 outcome of the Underlying Matter. The undersigned recognizes that a stay may be warranted

1 where proceeding with the case would require a court to consider facts developed in an  
2 underlying state suit or potentially lead the court to make factual determinations that conflict with  
3 facts determined in the underlying action. *See Zurich Am. Ins. Co. v. Omnicell, Inc.*, 2019 WL  
4 570760, at \*6 (N.D. Cal. Feb 12, 2019). *See also RLI Ins. Co. v. Ace Am. Ins. Co.*, 2020 WL  
5 1322955, at \*4 (N.D. Cal. Mar. 20, 2020) (“courts look for whether the underlying case would  
6 make determinations that would inform or ‘contribute to the decision of[ ] the factual and legal  
7 issues before the district court.’”) (quoting *Lockyer*, 398 F.3d at 1110).

8 That does not appear to be a risk here. “For an insurer, the existence of a duty to defend  
9 turns not upon the ultimate adjudication of coverage under its policy of insurance, but upon those  
10 facts known by the insurer at the inception of a third party lawsuit.” *Montrose I*, 6 Cal. 4th 287 at  
11 295. (citations omitted). In other words, “the duty to defend runs to claims that are merely  
12 potentially covered, in light of facts alleged or otherwise disclosed.” *State Farm Gen. Ins. Co. v.*  
13 *Phillips*, 591 F. Supp.3d 680, 686 (C.D. Cal. 2022) (quotation and citation omitted). “The  
14 determination whether the insurer owes a duty to defend is usually made in the first instance by  
15 comparing the allegations of the complaint with the terms of the policy.” *Horace Mann Ins. Co.*,  
16 4 Cal. 4th at 1081.

17 During the hearing on Plaintiffs’ motion, counsel for Kinsale conceded the general  
18 proposition that an insurer’s duty to defend is determined based on the pleadings and facts known  
19 to the insurer at the time of its coverage decision. (2/23/2022 Transcript at 11:07:23 a.m.).

20 In short, the undersigned agrees with Plaintiffs that answering the discrete question  
21 whether Kinsale owes a duty to defend claims that are “merely potentially covered” by its policies  
22 for the TRC Entities may be answered without awaiting factual findings made in the Underlying  
23 Matter. As such, the stay properly may be lifted for the limited purpose of conducting discovery  
24 relating to and filing dispositive motions on the discrete question of whether and the extent to  
25 which Kinsale owes a duty to defend the TRC Entities in the Underlying Matter.

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**CONCLUSION**

For the forgoing reasons, the Court **GRANTS IN PART** Plaintiffs’ Motions to Lift Stay.

The stay is **HEREBY LIFTED** for the limited purpose of permitting the parties to conduct discovery relating to and file dispositive motions on the discrete question of whether and the extent to which Kinsale owes a duty to defend the TRC Entities in the Underlying Matter.

The parties are **HEREBY ORDERED** to meet and confer and file within 14 days of the date of this Order a joint report setting forth a proposed schedule to take and complete discovery on the limited question presented above, and a briefing schedule for any dispositive motions on that question. No discovery shall commence until the Court enters a scheduling order based on the parties’ joint report.

In the event the parties agree to modify the scope of discovery and/or dispositive motions relating to the limited question presented above, they may include in their joint report a stipulation setting forth any agreed-upon modification.

IT IS SO ORDERED.

Dated: March 10, 2023

  
UNITED STATES MAGISTRATE JUDGE