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14   UNITED STATES DISTRICT COURT

15   EASTERN DISTRICT OF CALIFORNIA

16   SACRAMENTO DIVISION

17 GAYLE SMITH,   No. 2:10-cv-02290-FCD (CMK)

18   Plaintiff,   STIPULATION AND ORDER TO STAY
                                          PLAINTIFF'S ACTION PENDING
19   vs.   RESOLUTION OF ARBITRATION
                                          PROCEEDINGS
20 ALLSTATE INDEMNITY COMPANY;
    Does 1 through 20, inclusive
21
            Defendants.
22

23   THE PARTIES, THROUGH THEIR RESPECTIVE COUNSEL OF RECORD,

24 STIPULATE AS FOLLOWS:

25   **Background Facts**

26   1.   Allstate Indemnity Company issued an automobile policy to plaintiff Gayle Smith,

27 which was in effect on or about October 8, 2008 (the "Policy"). On or about December 19,

28 2008, plaintiff was involved in a car accident. Subsequently, plaintiff made a claim to Allstate

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-1-

1   under the Policy's uninsured motorist provision. Because the parties did not agree as to the

2   value of plaintiff's claim, the claim was submitted to arbitration under the Policy's terms.

3   2.   The Policy contains the following provisions regarding arbitration of

4   uninsured/underinsured motorist claims:

Part VI
Uninsured Motorists Insurance Coverage
Coverage SS
We will pay those damages that an insured person is legally
entitled to recover from the owner or operator of an uninsured
auto because of:

1.   **bodily injury** sustained by an insured person, and
property damage.

2.   **Property damage** is covered only if a separate limit is
shown on the Policy Declarations for Uninsured Motorists
Insurance - Property Damage.

. . . .

The right to benefits and the amount payable will be decided by
agreement between the insured person and **Allstate**. If an
agreement can't be reached, the decision will be made by
arbitration.

If We Cannot Agree

If **you** and **we** disagree on your right to receive any damages or
on the amount, then upon the written request of either party, the
disagreement will be settled by a single neutral arbitrator.

19   3.   In addition to the on-going arbitration proceeding, plaintiff also filed a complaint in

20   the above captioned matter against Allstate for breach of contract, breach of the covenant of

21   good faith and fair dealing, and "insurance bad faith."

Stay of Pending Action in its Entirety

23   4.   In federal court, the Federal Arbitration Act ("FAA") governs enforcement of

24   agreements to arbitrate, the manner of conducting arbitrations, and standards for reviewing and

25   enforcing arbitration awards. It mandates the enforcement of arbitration agreements arising out

26   of transactions involving interstate commerce and provides in relevant part as follows:

A written provision in any . . . contract evidencing a transaction
involving commerce to settle by arbitration a controversy thereafter
arising out of such contract . . . shall be valid, irrevocable, and
enforceable, save upon such grounds as exist at law or in equity for the

-2-

1   revocation of any contract.

2   9 U.S.C. § 2 et seq; *see also Warren-Guthrie v. Health Net*, 84 Cal. App. 4th 804, 810-11 (2000)

3   (overruled on another point in *Cronus Investments, Inc. v. Concierge Services*, 35 Cal. 4th 376,

4   393, fn. 8 (2005) (an insurance policy is within the scope of the FAA as affecting interstate

5   commerce)).

6   5.   As the California Supreme Court has explained, the "FAA, and section 2 in

7   particular, 'was intended to reverse centuries of judicial hostility to arbitration agreements,' by

8   placing arbitration agreements 'upon the same footing as other contracts.' Through the FAA,

9   'Congress precluded States from singling out arbitration provisions for suspect status . . . .'"

10   *Broughton v. Cigna Healthplans of California*, 21 Cal. 4th 1066, 1074 (1999); *see also Gilmore*

11   *v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991) (the FAA's purpose is "to reverse the

12   longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements

13   upon the same footing as other contracts").

14   6.   Likewise, California Code of Civil Procedure Section 1281.2 provides: "On

15   petition of a party to an arbitration agreement alleging the existence of a written agreement to

16   arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court

17   shall order the petitioner and the respondent to arbitrate the controversy if it determines that an

18   agreement to arbitrate the controversy exists . . . ." California courts have held that the language

19   is mandatory, not precatory, *Coast Plaza Doctors Hosp. v. Blue Cross of California*, 83 Cal.

20   App. 4th 677, 687 (2002), and that any "doubts concerning the scope of arbitable issues [should]

21   be resolved in favor of arbitration." *Market Ins. Corp. v. Integrity Ins. Co.*, 188 Cal. App. 3d

22   1095, 1098 (1987).

23   7.   The parties request this Court stay this action pending the conclusion of the

24   arbitration. The FAA directs District Courts to stay proceedings pending conclusion of

25   arbitration:

26   If any suit or proceeding be brought in any of the courts of the United
     States upon any issue referable to arbitration under an agreement in
27   writing for such arbitration, the court in which such suit is pending,
     upon being satisfied that the issue involved in such suit or proceeding is
28   referable to arbitration under such an agreement, *shall on application of
     one of the parties stay the trial of the action until such arbitration has*

-3-

Case No. 2:10-cv-02290-FCD (CMK)   STIPULATION TO STAY PLAINTIFF'S ACTION

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been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

3   9 U.S.C § 3 (emphasis added); *see also* 9 U.S.C. § 4.

4   8.   A stay is necessary to avoid duplicative proceedings. *See Leyva v. Certified*

5   *Grocers of California, Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979) ("It would waste judicial

6   resources and be burdensome upon the parties if the district court in a case such as this were

7   mandated to permit discovery, and upon completion of pretrial proceedings, to take evidence

8   and determine the merits of the case at the same time as the arbitrator is going through a

9   substantially parallel process.").

10   9.   The parties request this Court vacate all dates currently scheduled pending the

11   completion of arbitration.

12   10.   The parties will contact the court within 30 days of the arbitration award or other

13   resolution of the arbitration proceedings and request this Court schedule a case management

14   conference.

15   RESPECTFULLY SUBMITTED,

16   Dated: January 12, 2011   ATTORNEY AT LAW

17   /s/ DAVID L. EDWARDS
18   By_____(as authorized on 1/12/11)_____
                                              DAVID L. EDWARDS
19
                                       Attorney for Plaintiff
20   GAYLE SMITH

21   Dated: January 12, 2011   SNR DENTON US LLP

22

23   By_____/s/ JEFFRY BUTLER_____
                                              JEFFRY BUTLER
24
                                       Attorneys for Defendant
25   ALLSTATE INDEMNITY COMPANY

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-4-

ORDER

IT IS HEREBY ORDERED that:

1.   All proceedings in the above-captioned matter are stayed pending resolution of the underlying arbitration.

2.   All dates currently scheduled are vacated.

3.   The parties shall contact this Court within 30 days following the arbitration award or other resolution of the arbitration proceedings to request a case management conference.

Dated: January 13, 2011

_____

FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

Case No. 2:10-cv-02290-FCD (CMK)   STIPULATION TO STAY PLAINTIFF'S ACTION