

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALLIED PROPERTY AND CASUALTY  
INSURANCE COMPANY,

No. 2:11-cv-00740-MCE-KJN

Plaintiff,

v.

MEMORANDUM AND ORDER

ALVIN ROBERTS, SHIRLEY  
ROBERTS, ALFONSO GARCIA,  
JESSIE HERNANDEZ, ALBERT HUNG,  
MANUEL A.P. GONZALEZ AND  
ALLSTATE INSURANCE COMPANY,

Defendants.

----oo0oo----

Through this action, Plaintiff Allied Property and Casualty Insurance Company ("Plaintiff") seeks rescission of a homeowners policy issued to its insureds, Defendants Alvin and Shirley Roberts ("Defendants"), and a declaratory judgment that it owes no coverage for two tort actions brought against Defendants in Sacramento County Superior Court. Presently before the Court is Defendants' Motion to Stay the instant federal court proceedings pending resolution of the underlying tort proceedings filed against Defendants in state court.

1 The tort proceedings stem from the same alleged incident and  
2 facts at issue in the federal proceedings. Defendants' Motion  
3 was filed on April 26, 2011. (Defs.'s Mot. to Stay, ECF No. 12.)  
4 Plaintiff filed a timely opposition to Defendants' Motion to Stay  
5 on May 26, 2011 (Pl.'s Opp'n, ECF No. 17), to which Defendants  
6 filed a timely reply (Defs.' Reply, June 2, 2011, ECF No. 21).  
7 For the reasons set forth below, Defendants' Motion to Stay is  
8 granted.<sup>1</sup>

9  
10 **BACKGROUND<sup>2</sup>**  
11

12 This action arises from a dispute over insurance coverage  
13 for a fire that took place on September 16, 2008, in a warehouse  
14 on a property in Galt, California, owned by Defendants. The fire  
15 caused property damage and two fatalities. As a result, two tort  
16 actions were brought against Defendants in state court, as  
17 indicated above. The first action, the Gonzalez action, charges  
18 Defendants with wrongful death based on general negligence and  
19 premises liability. The second action, the Hung action, charges  
20 Defendants with wrongful death, personal injuries, and loss or  
21 property based on theories of general negligence, premises  
22 liability and products liability.

23 ///

24  
25 <sup>1</sup> Because oral argument will not be of material assistance,  
26 the court ordered this matter submitted on the briefs. E.D. Cal.  
Local Rule 230(g).

27 <sup>2</sup> The factual assertions in this section are based on the  
28 allegations in Plaintiff's Opposition to Defendants' Motion to  
Stay, unless otherwise specified. (See Pl.'s Opp'n, ECF No. 17.)

1           At the time of the fire, a policy of liability insurance was  
2 in effect for the home that was located on the Galt property.  
3 That policy was issued by Plaintiff to Defendants. Two  
4 additional homeowners insurance policies were also issued by  
5 Plaintiff to Defendants. As such, Plaintiff is providing a  
6 defense to Defendants for both underlying actions, subject to a  
7 full reservation of rights. The reservation of rights includes  
8 the right to seek a declaratory judgment that Plaintiff has no  
9 duty to defend or indemnify Defendants under any of the policies  
10 issued to them.

11           According to Plaintiff, at the time the insurance policies  
12 were issued, Defendants failed to disclose both the existence of  
13 the warehouse and the fact that business activities were being  
14 conducted there. Plaintiff alleges that, due to these material  
15 misrepresentations by Defendants, it is entitled to rescind the  
16 insurance policies it issued to Defendants. Plaintiff also  
17 alleges that it is not obligated to defend Defendants against the  
18 tort actions brought in state court because the warehouse does  
19 not qualify as an insured premises as required for coverage to  
20 exist under the policies. Furthermore, Plaintiff alleges that  
21 its policies do not cover injuries or property damage arising  
22 from business activities conducted on an insured location.  
23 Finally, Plaintiff alleges that its policies do not cover  
24 injuries arising out of the conduct of a partnership or joint  
25 venture.

26 ///

27 ///

28 ///

1 Defendants assert that there is an overlap of the factual  
2 issues to be decided in the present declaratory judgment action  
3 and in the underlying actions in state court, and that the  
4 overlap constitutes prejudice that requires a stay of the present  
5 action for declaratory relief until the underlying state tort  
6 actions have concluded. Defendants' Motion to Stay is therefore  
7 now before this Court.

8  
9 **STANDARD**

10  
11 The power to issue a motion to stay derives from a federal  
12 district court's power to control its docket and ensure that  
13 cases before it are justly determined. Levya v. Certified  
14 Grocers of Cal., Ltd., 593 F.2d 857, 864-65 (9th Cir. 1979),  
15 cert. denied, 444 U.S. 827 (1979). Indeed, "a trial court may,  
16 with propriety, find it is efficient for its own docket and the  
17 fairest course for the parties to enter a stay of an action  
18 before it, pending resolution of independent proceedings which  
19 bear upon the case." Id. at 863-64. "This rule applies whether  
20 the separate proceedings are judicial, administrative, or  
21 arbitral in character, and does not require that the issues in  
22 such proceedings are necessarily controlling of the action before  
23 the court." Id. A federal district court has broad discretion  
24 in deciding whether to issue a stay. Fed. Sav. & Loan Ins. Corp.  
25 v. Molinaro, 889 F.2d 899, 902 (9th Cir. 1989).

26 ///

27 ///

28 ///



1 Courts have noted three major concerns surrounding the trial  
2 of coverage issues which necessarily turn upon the facts to be  
3 litigated in the underlying action. First, the insurer, who is  
4 supposed to be defending the insured and with whom the insured  
5 has a special relationship, is effectively attacking its insured  
6 and thus aiding the claimant in the underlying suit. Haskel,  
7 Inc. v. Super. Ct., 33 Cal. App. 4th 963, 979 (1995) (citing  
8 Montrose Chem. Corp. v. Super. Ct. (Montrose II), 25 Cal. App.  
9 4th 902, 910 (Cal. App. 4th 1994)). In order to guard against  
10 such abuse, the Court must not permit the insurer to effectively  
11 join forces with the third-party claimants in order to defeat  
12 coverage. Montrose II, 25 Cal. App. 4th at 909-10.

13 Second, litigating the coverage dispute while the underlying  
14 action is still pending requires the insured to "fight a two  
15 front war, litigating not only with the underlying claimant, but  
16 also expending precious resources fighting an insurer over  
17 coverage questions." Haskel, Inc., 33 Cal. App. 4th at 979  
18 (citing Montrose II, 25 Cal. App. 4th at 910). Fighting such a  
19 two front war "effectively undercuts one of the primary reasons  
20 for purchasing liability insurance." Id.

21 Third, "there is a real risk that, if the declaratory relief  
22 action proceeds to judgment before the underlying action is  
23 resolved, the insured could be collaterally estopped to contest  
24 issues in the latter by the results in the former." Id. (citing  
25 Montrose II, 25 Cal. App. 4th at 910).

26 ///

27 ///

28 ///

1        "It is only when there is no potential conflict between the  
2 trial of the coverage dispute and the underlying action that an  
3 insurer can obtain an early trial date and resolution of its  
4 claim that coverage does not exist." Montrose II, 25 Cal. App.  
5 4th at 910 (emphasis added). When such a potential conflict  
6 exists, a district court should enter a stay. "By contrast, when  
7 the coverage question is logically unrelated to the issues of  
8 consequence in the underlying judgment, the declaratory relief  
9 action may properly proceed to judgment." Montrose I, 861 P.2d  
10 at 1162.

11        In the present case, there are two underlying tort suits  
12 pending against Defendants in Sacramento Superior Court.  
13 (Defs.'s Mot. to Stay, 14:6, ECF No. 12.) Plaintiff is defending  
14 Defendants in these actions under a reservation of rights. (Pl's  
15 Opp'n, 3:5, ECF No. 17.) Defendants' liability in the underlying  
16 actions hinges on the underlying plaintiffs establishing that  
17 Defendants knew or should have known that the warehouse on the  
18 Galt property was being used for business purposes, and that the  
19 decedents were living on the premises. (Defs.'s Mot. to Stay,  
20 14:12-14, ECF No. 12.) Defendants seek to prove that they had no  
21 knowledge of the nature and scope of the underlying plaintiffs'  
22 business activities or that the underlying plaintiffs used the  
23 warehouse as a residence. (Defs.'s Mot. to Stay, 14:8-10, ECF  
24 No. 12.) Furthermore, Defendants seek to prove that they were  
25 defrauded by the underlying plaintiffs, and that the underlying  
26 plaintiffs are legally responsible for the deaths and damages  
27 claimed. (Defs.'s Mot. to Stay, 14:10-11, ECF No. 12.)

28 ///

1 Plaintiff asserts that it will only litigate two issues in  
2 its action for a declaratory judgment before the underlying  
3 actions are concluded: (1) that the warehouse does not qualify as  
4 an "insured premises" or as an "insured location" under the  
5 various insurance policies; and (2) that Defendants failed to  
6 disclose the existence of the warehouse on the property and the  
7 fact that business activities were being conducted in the  
8 warehouse. (Pl's Opp'n, 8:10-15, ECF No. 17.) Plaintiff claims  
9 that it will refrain from asserting coverage defenses based on  
10 the business pursuits exclusion, the partnership exclusion, and  
11 the professional services exclusion. (Pl's Opp'n, 1:14017, ECF.  
12 No. 17.) Plaintiff further claims that the two issues it will  
13 pursue through this action can be decided without conducting  
14 discovery or litigating any disputed issues in the underlying  
15 action. (Pl's Opp'n, 9:13, ECF No. 17.)

16 Plaintiff's asserted limitations to the scope of the present  
17 action thread the needle too finely. Litigating whether  
18 Defendants failed to disclose to Plaintiff that business  
19 activities were being conducted in the warehouse still requires  
20 litigating whether Defendants knew that such activities were  
21 being conducted in the warehouse. Defendants' knowledge is a  
22 fact at issue in the underlying action. While Plaintiff contends  
23 that the declaratory judgment and rescission actions may be  
24 litigated solely on the basis on uncontroverted facts,  
25 Defendants' knowledge of the activities taking place within the  
26 warehouse is clearly a fact in controversy in both the present  
27 action and the underlying third-party lawsuits.

28 ///



1 Making a factual determination of Defendants' knowledge in the  
2 present action could be binding in the third-party action to the  
3 disadvantage of Defendants.

4 Furthermore, each of the concerns that favor the Court  
5 entering a motion to stay are present in this case. First,  
6 Plaintiff, who is supposed to be defending Defendants in the  
7 underlying tort actions in state court, is effectively attacking  
8 Defendants' defenses and counter-claims in the tort actions and,  
9 in doing so, Plaintiff may aid the claimants in the underlying  
10 suit. The Court will not permit Plaintiff to join forces with  
11 the third-party claimants to defeat coverage. Second, requiring  
12 Defendants to litigate the coverage dispute with Plaintiff while  
13 the underlying tort actions are still pending would require  
14 Defendants to fight a two front war. Third, in light of  
15 Plaintiff's theories for rescission and the claims pending  
16 against Defendants in the underlying action, there is a real risk  
17 that if the declaratory action proceeds to judgment before the  
18 underlying action is resolved, Defendants could be collaterally  
19 estopped to contest issues in the underlying action due to  
20 findings made by this Court in this lawsuit.

21 Given the foregoing, a potential conflict clearly exists  
22 between the trial of the coverage dispute in this Court and the  
23 underlying state court action. Because the coverage question  
24 turns on facts to be litigated in the underlying action,  
25 Defendants' Motion to Stay will be granted.

26 ///

27 ///

28 ///

1 **CONCLUSION**

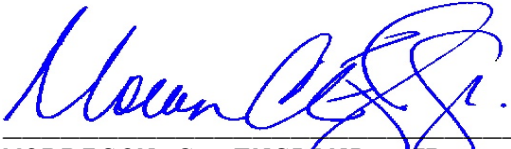
2

3 Following consideration of the circumstances of this matter  
4 as a whole, the Court in its discretion finds that Defendants'  
5 request for a stay of these proceedings is appropriate, pending  
6 resolution of the concurrent tort actions pending against them in  
7 state court. Defendants' Motion to Stay (ECF No. 12) is  
8 accordingly GRANTED. The stay shall remain in effect until the  
9 underlying tort actions against Defendants are concluded.

10 Staying this proceeding as to Defendants Roberts will also  
11 stay the action as to the remaining Defendants. Absent  
12 participation of Defendants Roberts, the ability of the various  
13 other Defendants to properly defend this case may be hindered. A  
14 stay as to Defendants Garcia, Hernandez, Hung, Gonzalez, and  
15 Allstate Insurance Company, in addition to the Robertses, is  
16 therefore also necessary, and the present matter is stayed in its  
17 entirety pending resolution of the underlying actions in state  
18 court.

19 IT IS SO ORDERED.

20 Dated: June 20, 2011

21   
22 \_\_\_\_\_  
23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28