

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARCH INSURANCE COMPANY,

No. C 10-04558 CW

Plaintiff,

ORDER DENYING MEC
DEFENDANTS' MOTION
FOR A STAY OF THE
PROCEEDINGS

v.

(Docket No. 28)

MITCHELL ENGINEERING COMPANY, a
California Corporation; S.F.
EQUIPMENT, a California
Corporation; S.F. HOLDINGS, INC.,
a California Corporation; MICHAEL
SILVA, an individual; STEPHANIE
SILVA, an individual; CURTIS F.
MITCHELL, an individual; CRYSTAL
MITCHELL, an individual; CURTIS
F. MITCHELL AS TRUSTEE OF THE
CURTIS F. MITCHELL FAMILY TRUST;
MACDONALD AUXILIARY CORPORATION,
solely in its capacity as
Trustee,

Defendants.

_____ /

Defendants Mitchell Engineering Company (MEC), S.F.
Equipment (SFE), S.F. Holdings, Inc. (SFH), Michael Silva,
Stephanie Silva, Curtis F. Mitchell, Crystal Mitchell, and Curtis
F. Mitchell, as Trustee of the Curtis F. Mitchell Family Trust
(the Trust), (collectively, the MEC Defendants) move to stay the
proceedings in the above captioned action. Defendant MacDonald
Auxiliary Corporation does not join the motion. Plaintiff Arch
Insurance Company opposes the motion. Having considered all of
the parties' submissions, the Court DENIES the MEC Defendants'
motion.

United States District Court
For the Northern District of California

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BACKGROUND

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2 This case involves a dispute between a general contractor and
3 its surety. MEC is a civil engineering and construction firm
4 based in San Francisco. MEC, the City and County of San Francisco
5 (CCSF) and the San Francisco Public Utilities Commission (SF PUC)
6 entered into several construction agreements for six public works
7 projects. MEC obtained surety bonds for the performance of its
8 work through Arch. MEC and Arch signed the first agreement, the
9 General Indemnity Agreement (GIA), on or about July 20, 2004. On
10 or about July 1, 2006, MEC and Arch signed a Financing and
11 Collateral Agreement (FCA). On or about December 19, 2006, with
12 consent from the MEC Defendants, Arch entered into a Loan Purchase
13 Agreement (LPA) with Mechanics Bank. Arch purchased from the
14 bank, and the bank assigned to Arch, all of the bank's rights and
15 remedies under various loan instruments executed by MEC and other
16 Defendants.
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19 Disputes between MEC and CCSF have resulted in the filing of
20 seven lawsuits, in addition to the above captioned action. Six
21 lawsuits are pending in state court, one for each public works
22 project. In another federal lawsuit, pending in this district,
23 MEC is pursuing civil rights claims against CCSF.

24
25 Arch contends that the MEC Defendants owe it over
26 \$54,000,000. On January 13, 2011, the MEC Defendants filed a
27 counterclaim against Arch, claiming breach of contract, and a
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1 third party complaint against CCSF, seeking indemnity. Docket No.
2 36.

3 LEGAL STANDARD

4 It is well-established that "the power to stay proceedings is
5 incidental to the power inherent in every court to control the
6 disposition of the cases on its docket with economy of time,
7 effort for itself, for counsel, and for litigants." Landis v.
8 North Am. Co., 299 U.S. 248 (1936). The Supreme Court in Landis
9 explained that the party seeking a stay "must make out a clear
10 case of hardship or inequity in being required to go forward
11 . . ." Id. at 255. Based on Landis, the Ninth Circuit requires
12 courts to consider the competing interests at stake, including
13 (1) the possible damage that may result from granting the stay;
14 (2) the hardship the party seeking the stay may suffer if required
15 to go forward; and (3) the orderly course of justice as it relates
16 to simplifying or complicating issues, evidence or questions of
17 law presented in the case. Lockyer v. Mirant Corp., 398 F.3d
18 1098, 1110 (9th Cir. 2005).

21 DISCUSSION

22 The MEC Defendants have failed to demonstrate that a stay is
23 warranted this in action. They contend that resolution of the
24 other seven lawsuits will provide them with sufficient funds to
25 cover their obligations to Arch. Whether or not that is true,
26 Arch would suffer a substantial delay if it were required to wait
27 until after the resolution of the seven lawsuits before pursuing
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1 its action for indemnity. While a jury verdict has been reached
2 in the other federal case, trial dates have not been set for the
3 majority of the state court cases. The dissipation of the MEC
4 Defendants' assets is at risk while the extent of their legal
5 obligations to Arch remains undecided. "[B]eing required to
6 defend a suit, without more, does not constitute a 'clear case of
7 hardship or inequity' within the meaning of Landis." Mirant
8 Corp., 398 F.3d at 1112.

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10 A stay would not serve an orderly and efficient resolution of
11 this case. Although this action arises from the same disputes
12 being litigated in the seven other lawsuits, the legal issues in
13 this action are not the same as those presented in the other
14 cases. As the MEC Defendants acknowledged in their opening brief,
15 Arch is seeking indemnity from the MEC Defendants in this
16 proceeding for amounts allegedly incurred on behalf of MEC in
17 relation to the construction projects at issue in the other
18 actions. The MEC Defendants have not, however, identified a claim
19 or issue in the other lawsuits that would resolve the terms of
20 their agreements or determine their obligations to Arch. The MEC
21 Defendants assert a risk of inconsistent rulings but do not
22 persuasively explain how this could occur. Furthermore, the
23 inability of the parties to conduct timely discovery on issues
24 that do not overlap with the other litigation could result in the
25 loss of relevant evidence through faded memories, witnesses who
26 become more difficult to locate, or documents that become
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1 inaccessible. I.K. v. Sylvan Union School District, 681 F. Supp.
2 2d 1179, 1193 (E.D. Cal. 2010) (citing Blue Shield of Ala. v.
3 Unity Outpatient Surgery Ctr., Inc., 490 F.3d 718, 724 (9th Cir.
4 2007)).

5 CONCLUSION

6 Because the MEC Defendants have not established that a stay
7 is warranted under the Landis framework, the Court DENIES their
8 motion. Docket No. 28.

9 The MEC Defendants shall serve their third-party complaint on
10 CCSF by February 7, 2011. The Court continues the Case Management
11 Conference currently scheduled for February 8, 2011 to March 1,
12 2011 at 2:00 pm to allow CCSF to appear. The parties shall
13 propose, in their joint case management conference statement,
14 procedures and a schedule that will lead to the most efficient
15 resolution of this case in light of the other pending actions.

16 IT IS SO ORDERED.

17 Dated: 1/24/2011

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21 CLAUDIA WILKEN
22 United States District Judge
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