

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

3
4 COLONY INSURANCE COMPANY,

No. C 12-1157 CW

5 Plaintiff,

ORDER DENYING
DEFENDANTS' MOTION
TO DISMISS OR STAY
(Docket No. 23)

6 v.

7 DOUGLAS FLADSETH; and LAW OFFICES
8 OF DOUGLAS C. FLADSETH,

9 Defendants.

10 _____/

11 Defendants Douglas Fladseth and the Law Offices of Douglas C.
12 Fladseth, a sole proprietorship, move to dismiss the first amended
13 complaint (1AC) of Plaintiff Colony Insurance Company, or to stay
14 proceedings in this case until the resolution of certain
15 underlying lawsuits pending in state court. Plaintiff opposes
16 Defendants' motion. The Court takes Defendants' motion under
17 submission on the papers and DENIES it.

18 BACKGROUND

19 Plaintiff initiated this action on March 8, 2012 and filed
20 its 1AC on April 10, 2012. The following facts are taken from the
21 1AC and the documents attached thereto.

22 Plaintiff insured Defendants pursuant to a Lawyers
23 Professional Liability Policy number EO404193, valid from August
24 20, 2010 to August 20, 2011. 1AC ¶ 1. The policy provides in
25 relevant part,

26 SECTION I - COVERAGES

27 1. Insuring Agreement

28 a. We will pay, in excess of the Deductible shown
in the Declarations, those sums any insured becomes

1 legally obligated to pay as "damages" because of an
2 act, error or omission arising out of your "legal
3 services" rendered or that should have been
4 rendered. We will have the right and duty to
5 defend any insured against a "claim" seeking those
6 "damages." However, we will have no duty to defend
7 any insured against any "claim" seeking "damages"
8 for "legal services" to which this insurance does
9 not apply. . . .

10 2. Exclusions

11 This Policy does not apply to any "claim":

12 . . .

13 d. Based on or directly or indirectly arising out
14 of the rights or duties under any agreement
15 including disputes over fees for services;

16 . . .

17 j. Based on or directly or indirectly arising out
18 of or resulting from:

19 . . .

20 (2) The gaining by any insured of any personal
21 profit, gain or advantage to which an insured
22 is not legally entitled; . . .

23 1AC, Ex. C, 40-42.

24 The policy also contains an addendum that provides,

25 SECTION I - COVERAGES, 2. Exclusions is amended and the
26 following added:

27 This insurance does not apply to any "claim" for or
28 awards of:

1 1. Punitive, exemplary or multiple damages; or

2 2. Equitable or non-pecuniary relief;

3 including any fines, penalties, court imposed
4 sanctions, return or restitution of legal fees,
5 costs or other expenses associated with such
6 awards.

7 Id. at 52.

8 Defendants have been named in two lawsuits currently pending
9 in the Sonoma County Superior Court, Scholz v. Fladseth, Case No.

1 SCV249442, and Christiansen v. Fladseth, Case No. SCV250126, the
2 latter of which is a putative class action. The contents of the
3 complaints in each lawsuit are materially identical for the
4 purposes of this action. In both cases, the plaintiffs assert
5 that Defendants failed to disclose to them the limitation on
6 attorneys' fees in medical malpractice claims under California
7 state law, charged fees in excess of those amounts and assert that
8 their contingency fee agreements were void for illegality. 1AC
9 ¶¶ 10-13, Exs. A and B. The causes of action asserted in each
10 include (1) money had and received, (2) fraud, (3) conversion,
11 (4) accounting, and (5) violation of California Business and
12 Professions Code section 17200. In one, the plaintiff also
13 asserts a claim for professional negligence. In both actions, the
14 plaintiffs seek, among other things, punitive damages, accounting
15 and restitution of funds unlawfully obtained.

16 In the 1AC in this action, Plaintiff seeks a determination
17 that coverage does not exist for the underlying actions against
18 Defendants, because the claims asserted therein are based upon a
19 dispute over fees and upon Defendants gaining personal profit,
20 gain or advantage to which they are not legally entitled, and
21 because the plaintiffs in the underlying actions seek punitive,
22 exemplary or multiple damages, or equitable or non-pecuniary
23 relief, which are expressly excluded from the insurance policy.
24 Plaintiff also seeks a declaration that it does not owe a defense
25 or indemnity to Defendants for those claims.

26 LEGAL STANDARD

27 Under the Declaratory Judgment Act, a two-part test is used
28 to determine whether jurisdiction over a claim for a declaratory

1 judgment is appropriate. Principal Life Ins. Co. v. Robinson, 394
2 F.3d 665, 669 (9th Cir. 2005). First, the court must determine if
3 an actual case or controversy exists within its jurisdiction. Id.
4 Second, if so, the court must decide whether to exercise its
5 jurisdiction. Id.

6 A district court has "discretion in determining whether and
7 when to entertain an action under the Declaratory Judgment Act."
8 Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995). However,
9 "there is no presumption in favor of abstention in declaratory
10 actions generally, nor in insurance coverage cases specifically."
11 Government Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th
12 Cir. 1998). "The district court's discretion to hear declaratory
13 actions over which it has jurisdiction is guided by the Supreme
14 Court's announcements in [Brillhart v. Excess Ins. Co., 316 U.S.
15 491 (1942)]." Principal Life Ins. Co., 394 F.3d at 672. "The
16 Brillhart factors are non-exclusive and state that, '[1)] the
17 district court should avoid needless determination of state law
18 issues; [2)] it should discourage litigants from filing
19 declaratory actions as a means of forum shopping; and [3)] it
20 should avoid duplicative litigation.'" Id. (quoting Gov't
21 Employees Ins. Co., 133 F.3d at 1225) (alterations in original).
22 "Essentially, the district court must balance concerns of judicial
23 administration, comity, and fairness to the litigants." Id.
24 (internal quotations omitted). The Ninth Circuit has also "noted
25 additional and potentially relevant considerations," including
26 "whether the declaratory action will serve a useful purpose in
27 clarifying the legal relations at issue" and "whether the
28

1 declaratory action is being sought merely for the purposes of
2 procedural fencing or to obtain a 'res judicata' advantage." Id.

3 DISCUSSION

4 Defendants do not assert that the Court lacks jurisdiction
5 over Plaintiff's claims for declaratory judgment. Instead, in
6 this motion, Defendants request that this Court exercise its
7 discretion to decline jurisdiction over this matter, or stay it
8 pending resolution of the underlying litigation.

9 Defendants contend that this action will be duplicative of
10 the state court actions, because the factual questions here are
11 the same as in those actions. Defendants rely on a variety of
12 state law cases that counsel that when there is a "risk of
13 inconsistent factual determinations that could prejudice the
14 insured," because the "coverage question turns on facts to be
15 litigated in the underlying action," a stay pending resolution of
16 the underlying suit is appropriate. Montrose Chemical Corp. v.
17 Superior Court, 6 Cal. 4th 287, 301 (1993). These cases also note
18 that, "when the coverage question is logically unrelated to the
19 issues of consequence in the underlying case, the declaratory
20 relief action may properly proceed to judgment." Id. at 302.

21 In the instant action, the Court is not being asked to
22 determine if Defendants actually gained profits to which they were
23 not entitled or if the contingency fee agreements were actually
24 void, and the Court would not have to determine these issues in
25 adjudicating this coverage action. Instead, the Court is being
26 asked if Defendants' potential liability on the state court
27 actions would be covered by the underlying insurance policy.

28

1 Thus, the "coverage question is logically unrelated to the issues
2 of consequence" in the underlying actions.

3 The other factors relevant to this determination also do not
4 favor abstention. Plaintiff is not a party to the underlying
5 cases, those actions will not determine the coverage issues that
6 are asserted here, and there are not any other pending cases in
7 which these issues would be decided. Thus, this litigation is not
8 duplicative and was not filed as a means of forum shopping.
9 Further, this action will serve a useful purpose to clarify the
10 legal obligations of Plaintiff regarding the underlying state
11 actions.

12 CONCLUSION

13 For the reasons set forth above, the Court DENIES Defendants'
14 motion to dismiss or stay (Docket No. 23).

15 IT IS SO ORDERED.

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17 Dated: 6/11/2012

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20 CLAUDIA WILKEN
21 United States District Judge
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