

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GENESIS INSURANCE COMPANY,
Plaintiff,
v.
MAGMA DESIGN AUTOMATION, INC.
and NATIONAL UNION FIRE
INSURANCE COMPANY,
Defendants.

Case No. [5:06-cv-05526-EJD](#) (HRL)

**ORDER RE DISCOVERY DISPUTE
JOINT REPORT #1**

Re: Dkt. No. 348

INTRODUCTION

This discovery dispute arises in litigation that has been going on for almost 10 years, and this is the first time that this court has been called upon to make any ruling in it. The court will try to put the dispute in context with a brief (and hopefully accurate) summary of the history of this insurance coverage case. The actors are:

Magma Design Automation, Inc. (“Magma”), a local high technology company that carried Director’s and Officer’s (D&O) liability insurance during the time in question;

Executive Risk Indemnity Inc. (“ERII”), which provided primary D&O coverage to Magma for the policy year 2004 and again for 2005;

Genesis Insurance Company (“Genesis”), which covered Magma under a D&O excess policy for a year that spanned 2003-2004 (“the 03-04 policy”);

1 National Union Fire Insurance Company (“National Union”), which covered Magma under
2 a D&O excess policy for years spanning 2004-2006 (“the 04-06 policy”).

3 A patent infringement action was filed against Magma in 2004. As sometime happens, the
4 patent action spawned two shareholder securities lawsuits against Magma that were filed in 2005.
5 For insuring purposes under the D&O policies, when did the securities actions arise? There was
6 no dispute that ERII had the primary coverage for both 2004 and 2005. But, which excess carrier
7 had coverage for them? Was it National Union, who was on the risk at the time the suits were
8 filed, or was it Genesis, who was on the risk the year before when the patent case was filed?
9 Under the terms of the Genesis policy, it would actually have been Genesis if it had received from
10 Magma at the time of the patent action’s filing, a proper “notice of circumstances” advising that a
11 securities lawsuit was looming in the future. Magma said that the notice it had caused to be sent
12 to Genesis back in 2004 said what it needed to say and was sufficient to trigger coverage under the
13 Genesis 03-04 policy for the 2005 securities lawsuits. ERII agreed with Magma, although it also
14 acknowledged that its primary coverage could be deemed invoked for either its 2004 or its 2005
15 policy (which year made no difference to ERII). Genesis disputed the sufficiency of the “notice”
16 and denied coverage. National Union denied coverage. (It is not clear to this court to what extent
17 National Union’s denial of coverage was driven by Magma’s and ERII’s conclusion that Genesis
18 owed the excess coverage.)

19 The present litigation began by Genesis filing a declaratory relief action against Magma
20 challenging the sufficiency of the “notice.” Before that suit could be addressed by the court, the
21 parties in the securities actions negotiated a settlement. ERII paid its \$10,000,000 limits. Genesis,
22 under reservation of rights, paid its \$5,000,000 limits. After the settlement, Genesis wanted its
23 money back, either from National Union or Magma. National and ERII also became parties in a
24 flurry of cross-claims and counterclaims. National said it had good policy defenses. Magma just
25 wanted one of the two excess carriers to be held responsible and did not much care which one it
26 was.

27 The first court ruling on the merits was a summary judgment that declared the 2004
28 “notice” to Genesis was sufficient, triggering coverage for the 2005 securities actions under the

1 Genesis 03-04 policy. National Union was off the hook.

2 Genesis appealed the summary judgment, and the Ninth Circuit not only reversed but
3 specifically held that the “notice” was not effective to trigger coverage under Genesis’s 03-04
4 policy. Genesis was vindicated. Back the case came to the District Court.

5 In a subsequent summary judgment ruling, the District Court found that National Union
6 had the excess coverage for the 2005 securities actions and that National Union must reimburse
7 Genesis for the \$5,000,000 that it had ponied up toward the settlement. National Union was back
8 on the hook.

9 National Union appealed, and the Ninth Circuit reversed. It did not rule out that National
10 Union might ultimately have to come up with the \$5,000,000. However, it held that there was no
11 such obligation yet because there had been no exhaustion of ERII’s \$10,000,000 primary limit of
12 its 2005 policy. (ERII had allocated its \$10,000,000 payment to its 2004 policy.) For the
13 moment, National Union was off the hook. Back came the case to the District Court to sort it out.
14 (On account of a retirement, the case was reassigned to a new District Judge.)

15 Again, summary judgment motions were brought, and the court made a series of rulings:

- 16 • The exact same “notice” that Magma sent to Genesis, a notice that the Ninth Circuit
17 held did not trigger coverage under the Genesis policy, was also sent to ERII.
18 Therefore, as a matter of law, the notice to ERII was not sufficient to trigger
19 coverage under ERII’s 2004 primary policy. Thus, ERII was mistaken to book its
20 \$10,000,000 payment under its 2004 policy and shall adjust its records to apply it
21 instead to its 2005 policy;
- 22 • It followed, then, since ERII’s primary limits for 2005 had been exhausted, that
23 National Union’s excess obligation kicked in;
- 24 • Since Genesis paid what National Union should have paid, Genesis was entitled to
25 equitable subrogation, to be reimbursed by National Union for the \$5,000,000.
26 Judgment was entered in favor of Genesis and against National Union for that
27 amount, plus interest.
- 28 • Based on the record presented, the court declined to rule that National Union had

1 intended to uncover that motivation.” The court views that statement as just speculation. Sure, it
2 looks bad for National Union just now, but it is appealing the court’s latest ruling against it, and it
3 did have some success (short-lived) on an earlier appeal. As a litigant, it is entitled to its day in
4 court, and Magma is asking this court to authorize a fishing expedition into the heart of the
5 insurer’s litigation strategy. The court does not countenance fishing expeditions, especially in this
6 particular pond.

7 Magma relies for support on White v. Western Title Ins. Co., 40 Cal. 3d 870 (1985).
8 There, the court upheld a bad faith judgment against a title insurer that was based on the evidence
9 that the insurer had made two low-ball settlement offers to the insured. True, that decision opened
10 a crack in the very door that Magma seeks to open wide here, but subsequent courts have not
11 opened it any further and have mostly limited it to its facts. See California Physicians’ Service v.
12 Super. Ct., 9 Cal App.4th 1321 (1992); Nies v. Nat’l Auto. & Casualty Ins. Co., 199 Cal. App.3d
13 1192 (1988); Arbol Media, Inc. v. Hartford Cas. Ins. Co. 2003 U.S. Dist. LEXIS 28465 (C.D. Cal.
14 2003). Indeed, the insurer has an absolute right to defend against its insured’s claims, and opening
15 up its litigation file to its insured would undermine its right to a fair day in court.

16 Ironically, National Union’s initial coverage position (to deny coverage) was precisely the
17 position advocated by its insured, Magma. It was only after Magma’s choice to put the excess risk
18 on Genesis’s 03-04 policy backfired, that Magma then came back to National Union. By this
19 time, however, National Union thought it may have policy defenses that it had not had at the very
20 beginning of the securities actions. It may have been wrong, and---if the latest summary judgment
21 holds up on appeal---will ultimately have to pay up, but it seems it should be able to litigate the
22 correctness of its legal position without opening up its litigation strategy.

23 **CONCLUSION**

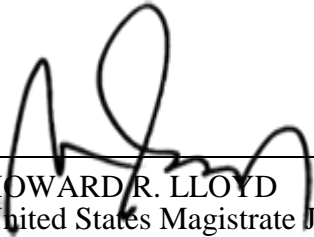
24 Magma has not cited and the court has not found any precedential decision that permitted
25 discovery such as is sought here. Magma’s request for post-litigation “claims handling
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information” (including reinsurance and reserves) is denied.

SO ORDERED.

Dated: May 31, 2016



HOWARD R. LLOYD
United States Magistrate Judge

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5:06-cv-05526-EJD Notice has been electronically mailed to:

Dennis M. Cusack dcusack@fbm.com, adugan@fbm.com, calendar@fbm.com

Glenn A. Friedman friedman@lbbslaw.com, groshong@lbbslaw.com

John D. Green jgreen@fbm.com, adugan@fbm.com, calendar@fbm.com

Lewis Kleiman Loss lloss@ljwllp.com, dprice@ljwllp.com, mdendinger@ljwllp.com

Michael Kenneth Johnson Michael.Johnson@lewisbrisbois.com,
Sandra.Hayes@lewisbrisbois.com, yasinah.johnson@lewisbrisbois.com

Paul Andre Desrochers desrochers@lbbslaw.com

Robert John Stumpf rstumpf@smrh.com, jlivingston@sheppardmullin.com

Terrence Reilly McInnis terrence.mcinnis@troutmansanders.com,
amanda.haynes@troutmansanders.com

Thomas Howard Prouty thomas.prouty@troutmansanders.com,
anabel.pineda@troutmansanders.com, felisa.lybarger@troutmansanders.com