

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

Kinsale Insurance Company v. VBC Madison LP et al.

Kinsale · No. 2:24-cv-02168-LK · Decided December 15, 2025

OPINION

Kinsale Insurance Company v. VBC Madison LP et al.

PER CURIAM.

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UNITED STATES DISTRICT COURT

8

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

9 10

KINSALE INSURANCE COMPANY, CASE NO. 2:24-cv-02168-LK

11 Plaintiff, ORDER STAYING CASE FOR SIX

12 v. MONTHS

13 VBC MADISON LP et al., 14 Defendants. 15 16 This matter comes before the Court on
Defendant VBC Madison LP's Renewed Motion to 17 Stay, Dkt. No. 59, which Kinsale opposes,
Dkt. No. 64. For the reasons stated below, the Court 18 grants the motion in part and denies the
motion in part.

19 I. BACKGROUND

20 This is an insurance coverage action. Defendant VBC Madison LP, the insured party in 21 this
case, owned a vacant building in Seattle that caught fire. Dkt. No. 51 at 2. Frontier 22
Development Corporation owns an adjacent building that was allegedly damaged from the fire. 23
Dkt. No. 55 at 4; Dkt. No. 24 at 4. Frontier's liability insurer sent a demand letter to VBC in
24 February 2024, and those claims against VBC are the "Underlying Claims" in this action. See
Dkt.

1 No. 55 at 4; Dkt. No. 24 at 4; Dkt. No. 46 at 2; see also Dkt. No. 47-3. Plaintiff Kinsale
Insurance

2 Company is VBC's liability insurer. Dkt. No. 54 at 6. Kinsale has been defending VBC under a
3 reservation of rights and filed this suit seeking a declaration that it owes no defense or indemnity
4 obligations related to the Underlying Claims. Id. at 6, 32. 5 After answering the complaint, VBC
filed a motion to stay the case "because it stands to 6 prejudice VBC Madison's ability to fully and
fairly defend itself from the Underlying Claims." 7 Dkt. No. 28 at 2. Kinsale then filed a motion
for summary judgment, arguing that it has "no duty 8 to defend and no duty to indemnify VBC

with respect to the Underlying Claims” based on two 9 policy exclusions. Dkt. No. 46 at 2–3. 10 The Court denied VBC’s motion to stay, finding that a stay was not warranted at that stage 11 of the proceedings, with the caveat that it may “reconsider whether to stay this action” if the dispute 12 could not be “decided on purely legal grounds.” Dkt. No. 56 at 3–7. The Court subsequently denied 13 Kinsale’s motion for summary judgment, finding disputed facts as to the applicability of the 14 insurance policy exclusions. See generally Dkt. No. 58; see also Dkt. No. 69 (denying Kinsale’s 15 motion for reconsideration of the summary judgment order). Following the Court’s summary 16 judgment order, VBC filed this new motion to stay the case pending the resolution of the 17 Underlying Claims. Dkt. No. 59.

18 II. DISCUSSION

19 A. Legal Standard 20 “[T]he power to stay proceedings is incidental to the power inherent in every court to 21 control the disposition of the causes on its docket with economy of time and effort for itself, for 22 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The Court “may order 23 a stay of the action pursuant to its power to control its docket and calendar and to provide for a 24 just determination of the cases pending before it.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979). In considering whether to grant a stay, courts consider several 2 factors, including “the possible damage which may result,” “the hardship or inequity which a party 3 may suffer in being required to go forward,” and “the orderly course of justice[.]” *CMAX, Inc. v. 4 Hall*, 300 F.2d 265, 268 (9th Cir. 1962). “[I]f there is even a fair possibility that the stay . . . will 5 work damage to someone else,’ the party seeking the stay ‘must make out a clear case of hardship 6 or inequity.’” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) (quoting *Landis*, 299 7 U.S. at 255). 8 B. The CMAX Factors Weigh in Favor of a Stay 9 1. Hardship resulting from a stay 10 Kinsale argues that a stay would prejudice it “by forcing it to pay for the defense of the 11 Underlying Claims where there is likely no coverage obligation.” Dkt. No. 64 at 7. VBC responds 12 that paying to defend against the Underlying Claims is one of Kinsale’s contractual obligations 13 and therefore not an injury or hardship. See Dkt. No. 66 at 3. 14 Under Washington law, insurers cannot recoup defense costs incurred under a reservation 15 of rights defense while the insurer’s duty to defend is uncertain. See *Nat’l Sur. Corp. v. Immunex 16 Corp.*, 297 P.3d 688, 695 (Wash. 2013). Without recoupment, an insurer’s only avenue to protect 17 itself is to file a declaratory judgment action, as Kinsale has done here. See *id.* at 697 (an 18 insurer “must pay defense costs until it obtains a judicial declaration that it owes no duty to 19 defend”). 20 As the Court discussed in denying VBC’s first motion to stay, cases involving Washington 21 law and no bargained-for reimbursement clause generally agree that staying the coverage action 22 would prejudice the insurer. See, e.g., *Allstate Prop. & Cas. Co. v. Turpen*, No. 3:24-CV-05462- 23 TMC, 2025 WL 948743, at *2 (W.D. Wash. Mar. 28, 2025) (“[W]hen no reimbursement clause is 24 noted in the insurance contract and the insurer is seeking declaratory judgment on its duty to 1 defend, courts in this District have weighed this factor against a stay.”); *Northfield Ins. Co. v. 2 Yates, Wood, & MacDonald, Inc.*,

No. 2:24-CV-00441-TL, 2024 WL 4751181, at *2 (W.D. Wash.

3 Nov. 12, 2024) (same); *Gov't Emps. Ins. Co. v. Gerjets*, No. 19-CV-5912-RJB, 2020 WL 1031295,

4 at *4 (W.D. Wash. Mar. 3, 2020) (same). However, those cases predominantly address the propriety of a stay prior to a summary judgment decision. See *Turpen*, 2025 WL 948743, at *1 6 (insured filed motion to stay case after insurer filed complaint); *Yates*, 2024 WL 4751181, at *1 7 (noting that a summary judgment motion “remains pending.”); *Gerjets*, 2020 WL 1031295, at *4 8 (noting that a summary judgment motion was “pending but not yet ripe for consideration”). 9 As VBC points out, the risk of hardship to an insurer is significantly reduced following 10 denial of the insurer’s motion for summary judgment. See Dkt. No. 59 at 4–5. That is because an 11 insurer must defend if its “policy conceivably covers the allegations in the complaint.” *Woo v. 12 Fireman’s Fund Ins. Co.*, 164 P.3d 454, 459 (Wash. 2007); see also *Am. Best Food, Inc. v. Alea 13 London, Ltd.*, 229 P.3d 693, 700 (Wash. 2010) (“Again, if there is any reasonable interpretation of 14 the facts or the law that could result in coverage, the insurer must defend.”); *Immunex*, 297 P.3d 15 at 691 (“[W]e have repeatedly held that the scope of an insurer’s duty to defend is broader than 16 the terms of the policy.”). Because the Court found that factual issues precluded summary 17 judgment on both coverage exclusions, Dkt. No. 58 at 7–15, “there is [a] reasonable interpretation 18 of the facts or the law that could result in coverage,” so Kinsale “must defend.” *Am. Best Food*, 19 229 P.3d at 700.1 In other words, after denial of summary judgment to an insurer, the grant of a 20 stay usually does not force an insurer to defend against claims that are clearly not covered by the 21 relevant policy. 22 23 1 There is no concern that a stay may force Kinsale to pay improper indemnity costs, as the duty to indemnify only 24 “applies to claims that are actually covered.” *Immunex*, 297 F.3d at 691. 1 However, Kinsale argues that this case is unique because “there is no underlying lawsuit 2 here which means that VBC is requesting a stay that could continue indefinitely to Kinsale’s 3 detriment.” Dkt. No. 64 at 7. VBC responds that these concerns are “overblown” because the 4 “Underlying Claims will resolve, the underlying claimants will sue, or the statute of limitations 5 will run, barring those claims.” Dkt. No. 66 at 4. In short, “Kinsale is not stuck defending forever.” 6 *Id.* 7 An indefinite stay should not be granted under normal circumstances. See *Dependable 8 Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (“Generally, stays 9 should not be indefinite in nature.”). Indeed, “[a] stay should not be granted unless it appears likely 10 the other proceedings will be concluded within a reasonable time in relation to the urgency of the 11 claims presented to the court.” *Leyva*, 593 F.2d at 864; see also *Dependable Highway Exp.*, 498 12 F.3d at 1066–67 (district court erred by issuing a stay “without any indication that it would last 13 only for a reasonable time,” and considering that “nearly two years [had] passed since the order 14 issued”). Taking into consideration the above analysis, the Court concludes that Kinsale may face 15 significant hardship from an indefinite stay, but is unlikely to face significant hardship from a time- 16 limited stay. 17 2. Hardship in the absence of a stay 18 VBC argues that allowing this action to

proceed would cause it hardship because “the 19 development of factual issues in this case could prejudice [it] in its defense of the Underlying 20 Claims.” Dkt. No. 59 at 6. VBC avers that Kinsale and Frontier both want to “establish that the 21 Building was vacant and unsecured,” so “Kinsale—in its attempt to avoid coverage—would be 22 helping Frontier and RSUI establish their cases against VBC Madison.” Id. Kinsale responds that 23 “[t]his argument is a red herring” because “VBC has already admitted that the Building was 24 vacant,” and “whether VBC’s efforts to secure the Building were sufficient has no bearing on its 1 insurance coverage because the Building was nonetheless accessed by third parties.” Dkt. No. 64 2 at 3. As the Court detailed at length in its summary judgment order, Kinsale’s argument misses 3 important nuance. See No. 58 at 13–15. Factual questions remain regarding whether and to what 4 extent VBC’s building was secured and the extent to which that affects coverage. Id. 5 Courts have acknowledged that where an “insurer effectively attacks its insured and thus 6 gives aid and comfort to the claimant in the underlying suit,” prejudice to the insured can result. 7 *Gerjets*, 2020 WL 1031295, at *4 (citation modified). This is a possibility here. For example, 8 Kinsale’s arguments that VBC failed to secure its premises—to prove that the Unsecured Property 9 Exclusion applies—could be used against VBC by Frontier or Frontier’s insurer, as could evidence 10 revealed in discovery. See, e.g., Dkt. No. 29 at 4 (letter from Frontier’s insurer to VBC asserting 11 that VBC’s building “was not properly secured, experiencing consistent issues with transient 12 individuals”). This prejudice could be avoided by a stay. Moreover, denial of a stay would force 13 VBC to continue fighting “a two-front war, thereby expending its resources fighting both the 14 insurer and the third-party action, which undercuts one of the primary reasons for purchasing 15 liability insurance.” *Gerjets*, 2020 WL 1031295, at *4 (citation modified). 16 While the Court was previously “not persuaded [by] any of these concerns” given the 17 possibility that this coverage dispute could have been resolved on purely legal grounds, Dkt. No. 18 56 at 5–6, the Court’s denial of Kinsale’s summary judgment motion changes that calculus. See 19 *id.* at 6 (“If . . . Kinsale is wrong that this dispute can be decided on purely legal grounds, then the 20 Court may reconsider whether to stay this action pending the resolution of the underlying 21 claims.”). Thus, this factor supports a stay at this stage of the proceedings. 22 3. Orderly Course of Justice 23 Finally, the orderly course of justice also supports a stay. This factor is “measured in terms 24 of the simplifying or complicating of issues, proof, and questions of law which could be expected 1 to result from a stay.” *CMAX*, 300 F.2d at 268 (citing *Landis*, 299 U.S. at 254–55). This case would 2 certainly be simplified by a clear determination of liability for the Underlying Claims. “And even 3 if this efficiency did not materialize, staying the case will still simplify questions of law and issues 4 of proof because the court will no longer have to navigate the minefield of possible prejudice it 5 currently finds itself navigating.” *Fed. Ins. Co. v. Holmes Weddle & Barcott PC*, No. C13-0926- 6 JLR, 2014 WL 358419, at *5 (W.D. Wash. Jan. 31, 2014). A stay would also obviate concerns as 7 to the propriety of Kinsale’s potential arguments aligning with Frontier’s interests and against 8 VBC’s. See, e.g., *Mut. of Enumclaw Ins. Co. v. Dan Paulson Constr., Inc.*, 169 P.3d 1, 8 (Wash. 9

2007) (an insurer defending under a reservation of rights may not engage “in any action which 10 would demonstrate a greater concern for the insurer’s monetary interest than for the insured’s 11 financial risk”). Thus, this final factor also supports granting a stay.

12 III. CONCLUSION

13 For the foregoing reasons, VBC’s motion for a stay is GRANTED IN PART and DENIED 14 IN PART. Dkt. No. 59. This case is STAYED for six months from the date of this Order. No later 15 than June 15, 2026, the parties must submit a Joint Status Report detailing the status of the 16 Underlying Claims and providing a proposed schedule for prompt resolution of this matter. To the 17 extent a longer stay is needed, either party may file an appropriate motion. 18 Dated this 15th day of December, 2025. 19 A 20 Lauren King United States District Judge 21 22 23 24