

## Staying an Insurer's Declaratory Relief Action - the Rules Clarified

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A recent decision issued by the California Court of Appeal, Second Appellate District, analyzed under what circumstances a liability insurer's declaratory relief action seeking to withdraw from the duty to defend an underlying lawsuit may be stayed – or allowed to proceed.

In [\*Great American Insurance Company v. Superior Court \(Angeles Chemical Company, Inc.\)\*](#), issued October 9, 2009, the appellate court remanded the case back down to the trial court to re-evaluate whether the trial court had properly stayed the insurer's declaratory relief action. In so doing, and in a case where there was no overlapping factual issues between the underlying action and the declaratory relief coverage action, the trial court was directed to exercise its discretion and balance the potential prejudice to both the insured and the insurer.

The underlying case involved a complex environmental claim against a number of insureds covered under a general liability policy issued by Great American. After settling a portion of the case and claiming that its \$500,000 policy limits were exhausted, Great American sought to extricate itself from any further obligation to defend the insureds by bringing a declaratory relief action. The insureds moved to stay the declaratory relief action, claiming that there were factual issues that overlapped between the underlying action and the declaratory relief coverage action, such that trying the declaratory relief action would prejudice the insured's rights in the underlying action. The trial court found the potential for some overlap and therefore issued a stay.

Great American filed a writ petition and the appellate court requested briefing on the propriety of the stay order. In analyzing three claims of "overlapping factual issues" asserted by the insureds, the appellate court found that two of those issues would not overlap between the underlying and declaratory relief actions, and that the third issue, involving some as-of-yet-unfiled bad faith claim, was premature, and thus the trial court had erred in staying the coverage action due to "overlapping factual issues."

That did not end the dispute, however, as the appellate court then explained that even if "there is no such factual overlap and the declaratory relief action can be resolved on legal issues or factual issues unrelated to the issues in the underlying action, the question as to whether to stay the declaratory relief action is a matter entrusted to the trial court's discretion," and in "exercising such discretion, however, the trial court should consider the possibility of prejudice to *both* parties." (Emphasis by court.) The court then set forth the three possible types of potential prejudice that could exist for an insured in having to fight a "two-front" war and the possible prejudice to an insurer in having to continue to pay defense costs indefinitely in a case where it no longer has any defense obligation.

Since the trial court had only issued its stay order on the factual overlap issue and not made any determination as to the balancing of possible prejudice to the insured and insurer, the appellate court remanded the case back to the trial court to exercise its discretion and perform the requisite balancing of prejudices. The appellate court also provided the trial court with its observations as to certain undisputed facts that may assist the trial court in making its determination.

This case presents an excellent primer on the subject of when an insurer's declaratory relief action is to be stayed pending the resolution of an underlying liability lawsuit and when an insurer is to be allowed to attempt to show when its declaratory relief claim may proceed to determine if any duty to defend still exists.