

ALERT

Insurer's Declaratory Judgment Action Stayed Because of Overlapping Issues With Underlying Litigation Against Insured

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The United States District Court for the Southern District of California stayed an insurer's declaratory judgment action because the coverage issues substantially overlapped with issues in dispute in the underlying litigation against the insured. *Admiral Ins. Co. v. Shah & Assocs., Inc.*, No. 13-cv-44, 2013 WL 3831331 (S.D. Cal. July 23, 2013).

The insured engineering firm was sued by the estate of a deceased pilot who crashed into an unmarked meteorological tower designed and built by the insured. The engineering firm tendered the suit to its insurer. After initially denying coverage for the suit, the insurer agreed to provide a defense subject to a reservation of rights. The insurer then sought a declaratory judgment that it had no duty to defend or indemnify the engineering firm because 1. the insured had prior knowledge of the incident that gave rise to the claim but did not report the incident on the application for the policy, and 2. the claim against the insured involved alleged product and construction defects rather than errors in the insured's design or engineering services that would fall within the scope of the policy at issue. The insured moved to stay the declaratory judgment proceeding.

The court stayed the coverage litigation pending the outcome of the underlying litigation because of the overlapping issues in the proceedings. As to the prior knowledge issue, the court noted that the underlying complaint also alleged that the defendants knew that the tower constituted a hazard to air navigation. Thus, both the underlying lawsuit and the coverage action would involve evidence regarding the insured's knowledge of circumstances that could give rise to the incident at issue. With respect to the insurer's design vs. product/

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construction defect argument, the court noted that the underlying lawsuit alleged product defects and both design and construction errors and that each defendant was jointly and severally liable for all of the alleged errors. Thus, both lawsuits would involve evidence regarding defects in the tower and whether and by whom design errors were committed. Accordingly, the court held that resolution of each coverage issue would require the resolution of factual disputes at issue in the underlying litigation.

The opinion is available [here](#).