

# District Court Refuses to Stay Excess Insurer's Declaratory Judgment Action on Duty to Advance Defense Costs

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The United States District Court for the Southern District of Iowa refused an insured's request to stay the portion of an excess insurer's declaratory judgment action related to its obligations to advance defense costs despite the fact that the underlying actions had not concluded. *Fed. Ins. Co. v. Sammons Fin. Co., Inc.*, 595 F. Supp. 2d 962 (S.D. Iowa Feb. 4, 2009). The court did, however, stay the portions of the insurer's action with respect to the applicability of the policy's exclusions.

The excess insurer issued a policy in excess of a primary professional liability policy to the insured, a stock insurance company. The insured sought coverage for several lawsuits alleging improper marketing of long-term annuities to senior citizens. The excess insurer filed a declaratory judgment action seeking a determination that it neither had a duty to advance defense costs nor indemnify the insured in any of the underlying actions. At the time the excess insurer's declaratory judgment action was filed, none of the underlying actions had concluded. Accordingly, the insured filed a motion to dismiss the declaratory judgment action, arguing that the action did not present an "actual controversy," and, even if the action was found to be justiciable, it should be stayed pending completion of the underlying actions.

The court held that the questions surrounding the excess insurer's duties to advance defense costs and indemnify the insured presented an "actual controversy" and were justiciable and ripe for review. In turn, the court addressed the insured's contention that a stay of the action was appropriate pending conclusion of the underlying actions. Among other factors, the court considered whether proceeding with the action at this time would serve a useful purpose, afford relief from controversy and advance the state's interest in judicial efficiency.

In regard to the excess insurer's duty to advance defense costs, the court refused to stay the proceedings pending completion of the underlying actions because resolution of the excess insurer's duty to advance defense costs was not factually dependent upon the outcomes of the underlying actions, and proceeding with this portion of the excess insurer's case provided an efficient means of clarifying and settling the legal relations between the parties. In contrast, the court stayed the portion of the excess insurer's action related to

the applicability of exclusions to the insurer's ultimate duty to indemnify. The court found that the excess insurer's indemnification obligations "turn on factual allegations squarely at issue in the [underlying actions]," making a stay of that portion of the action necessary to "avoid entanglements between the state and federal judicial systems" while enhancing judicial efficiency.