

Court Rejects Insured's Motion to Stay Coverage Action Pending Resolution of Underlying Claims

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The United States District Court for the Southern District of California has refused to stay a coverage action pending resolution of the underlying claims because the facts needed to resolve the coverage dispute differed from those needed to resolve the underlying litigation. *Colony Ins. Co. v. Epifany Props., Inc.*, 2013 WL 525820 (S.D. Cal. Feb. 11, 2013).

The insureds, a real estate company and its principal, were sued in six civil actions in state court. The plaintiffs in those actions alleged, *inter alia*, that the insureds made material misrepresentations to investors, failed competently to manage investment properties and failed to repay promissory notes. After the insureds sought coverage for those actions, their insurer filed a declaratory judgment action regarding the availability of coverage for the claims. The insurer argued that the claims did not involve "Professional Services" as that term was defined by its policy, that the claims were independently excluded because the policy barred claims for syndications, and that the policy afforded no coverage because the conduct alleged in the underlying claims constituted one act, error, omission or offense that began before the policy period. The insureds sought to stay the insurer's action, arguing that litigating the coverage issues at the same time would prejudice their defense of the underlying claims.

The court disagreed and denied the motion to stay. First, the court noted that the insureds had failed to identify any fact that would be needed to determine both liability in the underlying claims and coverage in the declaratory judgment action. In addition, reviewing the pleadings in the underlying suits, the court found that the facts necessary to determine whether the insureds were engaged in "Professional Services" or a syndication, or whether the conduct began before the policy period, did not turn on the same facts that would be needed to determine whether the insureds engaged in the wrongful conduct as alleged in the underlying litigation.