

Federal Court in California Denies Motion to Stay Rescission Action

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The United States District Court for the Northern District of California has denied a motion to stay a rescission action filed by an insurer in favor of the underlying state court action filed against the policyholder defendants in the rescission action. *Evanston Ins. Co. v. Ambis Corp., et al.*, 2005 U.S.Dist. LEXIS 2414 (N.D. Cal. Feb. 18, 2005). The insurer issued an insurance agents and brokers liability insurance policy to two insurance brokers on the basis of representations that the brokers were not "aware of any circumstance or any allegations or any contentions or any incident which may result in a claim against [the brokers]." A customer of the brokers subsequently filed the underlying state court action against the brokers and numerous other parties alleging that the brokers fraudulently represented that they had procured a policy of insurance. The insurer agreed to defend the suit under a reservation of rights and then filed the instant rescission action in federal court. The brokers moved to stay the rescission action in favor of the pending state action. The court denied this motion because the underlying state court action was not "substantially similar" to the rescission action, based largely on the fact that the insurer was not a party to the state court action. The court reasoned that "the fact that brokers' alleged misconduct may have injured their insurance provider as well as one of their customers in no way implies that all claims related to that misconduct must be adjudicated in the same forum."

For more information, please contact us at 202.719.7130.