UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ASPEN AMERICAN INSURANCE COMPANY, Plaintiff, v. HARRY WILLIAM OU, M.D., et al., Defendants.	CV 18-2312 DSF (GJSx) Order GRANTING in Part and DENYING in Part Defendant's Motion for Partial Summary Judgment and for a Stay (Dkt. 38) and DENYING Plaintiff's Application for Leave to File Response to Defendants' Reply (Dkt. 50)

Plaintiff Aspen American Insurance Company brings five claims against its insureds, Defendants Harry William Ou, M.D. and Harry W. Ou MD Inc. First Amended Complaint (FAC). Defendants bring two counterclaims against Aspen: a counterclaim seeking a declaration that Aspen owes a duty to defend and has a right to independent counsel at Aspen's expense, and a counterclaim for breach of the duty of good faith and fair dealing. Defendants now move for partial summary judgment as to their entitlement to independent counsel and to stay the instant case until the underlying state court medical malpractice case (Limon Action) is resolved. Dkt. 38-1 (Mot.). Aspen opposes the

Motion. Dkt. 45 (Resp.). Ou replied. Dkt. 46 (Reply).[1] The motion is GRANTED.

I. LEGAL STANDARD

"A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "This burden is not a light one." In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010). But the moving party need not disprove the opposing party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Rather, if the moving party satisfies this burden, the party opposing the motion must set forth specific facts, through affidavits or admissible discovery materials, showing that there exists a genuine issue for trial. Id. at 323-24; Fed. R. Civ. P. 56(c)(1). A non-moving party who bears the burden of proof at trial as to an element essential to his case must make a showing sufficient to establish a genuine dispute of fact with respect to the existence of that element of the case or be subject to summary judgment. See Celotex Corp., 477 U.S. at 322.

"[A] district court is not entitled to weigh the evidence and resolve disputed underlying factual issues." Chevron Corp. v.

[1] Aspen filed an Application for Leave to File Response to Defendant's Reply (Appl. for Leave) asserting Ou raised new facts and legal arguments in his Reply, his second declaration, and his second "Separate Statement of Uncontroverted Facts and Conclusions of Law." Appl. for Leave at 2 (Dkt. 50). The Application is denied. The Court notes where there are disputes related to facts or arguments Ou introduced on Reply that are discussed here. The Court agrees with Ou's observation that Aspen's proposed Response to his Reply, in part, simply rehashes its arguments included in its initial Response. Ou's Objection to Aspen's Appl. for Leave at 1-2. (Dkt. 51).

Pennzoil Co., 974 F.2d 1156, 1161 (9th Cir. 1992). Rather, "the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (internal quotation marks and ellipsis omitted).

II. UNCONTROVERTED FACTS[2]

Harry William Ou, M.D. is a surgeon. FAC ¶ 22. On April 20, 2016, Ou removed Adrienne Limon's gallbladder. FAC ¶ 22; see also Lowe Decl., Ex. 4 at 2 (Dkt. 38-3). Ou saw Limon several times after her surgery; she was also admitted and discharged from the hospital twice due to abdominal pain and bleeding. FAC ¶ 22; see also Lowe Decl., Ex. 4 at 2. Limon died on May 12, 2016.[3] FAC ¶ 22. According to Antrine Long, the claims specialist assigned to Ou's claim, Ou disclosed to Long that Limon's husband asked for her records during their May 31, 2017 phone discussion. Long Decl. ¶ 6 (Dkt. 45-5). Ou disputes this and claims Limon's husband never asked Ou for those records. Mot. at 6.

On March 28, 2017, Ou applied to Aspen for a healthcare professional liability insurance policy (Policy).[4] FAC ¶ 26. Aspen provided coverage to Defendants from May 1, 2017 to May 1, 2018.

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[2] Aspen's hearsay objections are moot because the Court did not rely on the evidence objected to. See Aspen's Evidentiary Objections (Dkt. 45-3).

[3] Apparently, during Limon's last hospital stay, a CAT scan revealed Limon had an aortic aneurism issue. Lowe Decl., Ex. 4 at 2. Limon declined surgery, requested discharge, and went home. Id. Limon subsequently called Ou because of abdominal pain. Id. Ou instructed her to go to the hospital immediately. Id. Limon's aortic aneurism ruptured, and she died as a result. Id.

[4] B&B Protector Plans, Inc. is the Program Administrator for Ou's Physician's Protector Plan, i.e. the Policy, which is underwritten by Aspen. Lowe Decl., Ex. 4 at 2.

Aspen's Statement of Genuine Disputes (ASGD) ¶ 4 (Dkt. 45-1); see also Lowe Decl., Ex. 3. Relevant here and pursuant to Section II, the Policy provided:

> Within the limit of liability shown on the Declarations:
>
> > We will pay on your behalf all sums you become legally obligated to pay as damages as a result of a claim or suit first made against you or against any physician or person for whom you are legally responsible and reported to us during the policy period because of an injury caused by an incident; provided that.
> >
> > (a) We will only pay those sums you become legally obligated to pay as damages as a result of any claim, suit, or incident, which prior to the inception of this policy, no insured had a reasonable basis to believe: (1) that a professional duty had been breached; or (2) that an incident might reasonably be expected to be the basis of a claim or suit against any insured; and
> >
> > (b) Any incident which gives rise to a claim or suit must occur on or after the retroactive date shown on the Declarations and before this policy or coverage for an insured terminates. Any claim associated with an injury caused by an incident must be first reported to us in writing during the policy period. The injury must also be caused by an insured under this policy.

Lowe Decl., Ex. 3 at 4-5 (original emphasis omitted). The retroactive date of Ou's policy was June 22, 2011. Id. at 2.

Limon's estate filed a wrongful death suit against Ou on March 29, 2017 and served the complaint on May 25, 2017 (Limon Action). ASGD ¶¶ 1-3; see also Lowe Decl., Ex. 2. Ou submitted the Limon complaint to Aspen on May 30, 2017. ASGD ¶ 5. On June 20, 2017, Aspen appointed Mark Kiefer of Erickson Arbuthnot, to defend Ou in the Limon Action and a related medical board investigation. ASGD ¶ 6; Lowe Decl., Ex. 4; FAC, Ex. D.

Aspen sent Ou a Reservation of Rights (ROR) letter on June 26, 2017 confirming that it would cover litigation defense costs related to the Limon Action. ASGD ¶¶ 7-12; see also Lowe Decl., Ex. 4 at 1. The ROR letter confirmed appointment of Kiefer as Ou's counsel and that it had advised "counsel of the coverage issues so that he and his firm [would] not inadvertently provide Aspen with confidential or privileged information bearing on those coverage issues." ASGD ¶¶ 6-7. Aspen also stated that Kiefer was Ou's counsel, not Aspen's, and Kiefer could not assist Aspen with any coverage issues. Id. ¶ 7.

The ROR letter also notified Ou that pursuant to the Policy, Aspen reserved its rights to deny coverage of a claim made by Ou, relying, in part, on Section VII.D. (i.e. Exclusion D) of the Policy:

> Despite any other provision of this policy, this policy does not apply to any claim arising out of, based upon or attributable to, in whole or in part . . . . [a]n incident which, prior to the inception of this policy, any insured had a reasonable basis to believe: (1) that a professional duty had been breached; or (2) that an incident might reasonably be expected to be the basis of a claim or suit against any insured.

Lowe Decl., Ex. 4 at 4-5; Lowe Decl., Ex. 3 at 7 (original emphasis omitted).[5]

Aspen also sent a retainer agreement to Kiefer, which stated in part:

> All developments which could affect our research projects or matters must be actively addressed and managed between us, no significant decision as to the strategy or tactics for handling of such matters shall be made absent our input. We also request that your firm continue to be proactive in helping us identify any issues that arise during the course of the retention.[6]

Ou's 1st Decl., Ex. 1 at 1; ASGD ¶ 13.

The Limon Action is currently stayed because an insurer for one of the other defendants filed bankruptcy proceedings. Long Decl. ¶ 4. Kiefer continues to be Ou's appointed counsel in the Limon Action. Lowe Decl., Ex. 6 at 3.

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[5] Similarly, Section VII.S.(2) (i.e. Exclusion S) states that the Policy also does not apply to "[a]ny incident or claim of which you first became aware prior to the inception of this policy." Lowe Decl., Ex. 3 at 8.

[6] Ou asserts he was unaware of the retention agreement and its contents until after Aspen filed suit. Ou's 1st Decl. ¶ 11.

III. DISCUSSION

A. Right to Independent Counsel

Ou asserts he is entitled to independent counsel in the Limon Action at Aspen's expense because there is an indisputable conflict of interest.[7]

"An insurer is obligated to provide its insured with a defense to a third party's lawsuit when there exists a *potential* for liability under the policy." Assurance Co. of America v. Haven, 32 Cal. App. 4th 78, 83-84 (1995) (citing Gray v. Zurich Ins. Co., 65 Cal. 2d 263, 275 (1966) (emphasis in original). "The insured-insurer relationship is based on the premise that, in the event of a claim, occurrence, or suit, the insured will tender the defense to the insurer, which will provide a defense and control the litigation with the full cooperation of the insured. 'When the insurer provides a defense to its insured, the insured has no right to interfere with the insurer's control of the defense . . . .'" Truck Ins. Exch. v. Unigard Ins. Co., 79 Cal. App. 4th 966, 979 (2000) (quoting Safeco Ins. Co. v. Superior Court, 71 Cal. App. 4th 782, 787 (1999)). That said, an attorney retained by an insurer to defend "the insured under the insurance policy owes the same duties to the insured as if the insured had hired the attorney him or herself." Gafcon, Inc. v. Ponsor & Assocs., 98 Cal. App. 4th 1388, 1406 (2002) (quoting Bogard v. Emp'rs Casualty Co., 164 Cal. App. 3d 602, 609 (1985)).

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[7] Aspen seeks a declaratory judgment that, pursuant to the terms of the Policy, it has no duty to defend or indemnify Defendants in connection with the Limon Action because prior to the Policy's inception: (1) Ou received a claim regarding the Limon Action, FAC ¶ 35; (2) Ou was aware of Limon's death, the incident related to the Limon Action, id. ¶ 41; and (3) Ou had a reasonable basis to believe that Limon's death might reasonably be expected to be the basis of a claim or suit against Ou. Id. ¶ 48.

If a conflict of interest arises between an insurer with a duty to defend and its insured, the insured may have the right to independent counsel at the insurer's expense. Cal. Civ. Code § 2860(a) (codifying San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc., 162 Cal. App. 3d 358 (1984)). But "[t]he conflict must be significant, not merely theoretical, actual not merely potential." Dynamic Concepts, Inc. v. Truck Ins. Exch., 61 Cal. App. 4th 999, 1007 (1998). An insurer's reservation of rights does not, by itself, create a conflict of interest. Id. at 1006. However, an insured may have the right to independent counsel "when an insurer reserves its rights on a given issue and the outcome of that coverage issue can be controlled by counsel first retained by the insurer for the defense of the claim." Centex Homes v. St. Paul Fire & Marine Ins. Co., 237 Cal. App. 4th 23, 31 (2015) (quoting § 2860(b)). In other words, "[i]t is only when the basis for the reservation of rights is such as to cause assertion of factual or legal theories which undermine or are contrary to the positions to be asserted in the liability case that a conflict of interest sufficient to require independent counsel to be chosen by the insured, will arise." Gafcon, 98 Cal. App. 4th at 1422; see also Gulf Ins. Co. v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone, 79 Cal. App. 4th 114, 131 (2000) ("A disqualifying conflict exists if [i]nsurance counsel had incentive to attach liability to the insured.") (internal quotation marks and ellipses omitted).

Rule 3-310

Ou maintains independent counsel is warranted because Rule 3-310 of the California Rules of Professional Conduct[8] prohibits Kiefer from simultaneously representing Aspen and Ou. See Flatt v. Superior Court, 9 Cal. 4th 275, 284 (1994)); see also CA ST RPC Rule 3-310. Ou claims Kiefer is essentially

[8] Currently cited as Rule 1.7.

representing Aspen because Aspen requires Kiefer to submit to Aspen detailed reports that include Ou's own comments and reactions to evidence in the case. Mot. at 11; see also Ou's 1st Decl. ¶ 8 (Dkt. 38-4). Ou maintains any attorney who simultaneously represents Aspen and Ou is automatically disqualified.

Aspen argues Rule 3-310 does not necessarily apply to the insurer-insured relationship. Even if it did, Aspen maintains it would only be triggered if there were an actual conflict, which does not exist here because Kiefer is not representing or involved in representing Aspen's suit. Aspen contends none of the reports or communications between Aspen and Kiefer directly or indirectly address any coverage issue or defense. ASGD ¶ 15.

Rule 3-310 does not create an automatic disqualification or entitle Ou to independent counsel.

The Parties dispute whether Aspen controlled Ou's defense in a way that would create an actual conflict of interest. The Policy expressly provides that Aspen has a right to appoint counsel. Lowe Decl., Ex. 3 at 5; see also Truck Ins. Exch.,79 Cal. App. 4th at 979 (finding an insurer can control an insured's defense). Ou has not met his burden to show the actual conflict of interest contemplated by Rule 3-310. Aspen does not dispute that Kiefer sent reports to Long, Aspen's third-party administrator. ASGD ¶ 15. However, the reports Aspen concedes exist are from dates different from the reports Ou alleges include confidential information. Compare ASGD ¶ 15 with Ou's 1st Decl. ¶ 7 and Ou's 2nd Decl. ¶ 5. None of the supposedly detailed reports are before

the Court; therefore there is no way to determine whether a material factual dispute on this point actually exists.[9]

Aspen's Control over the Limon Action

Ou argues Aspen controls Kiefer's decision-making to Ou's detriment. For example, Aspen refused to retain a medical expert.[10] Ou also asserts Aspen maintains its control over the Limon Action defense by requiring Kiefer to submit detailed reports and is prohibited from making any major decisions without Aspen's approval.

Aspen responds that Ou mischaracterizes the communications between Aspen and Kiefer in an attempt to manufacture a conflict where one does not exist. Aspen further contends it has not directed Kiefer to consider Aspen's coverage defenses or received or relied on information from Kiefer in evaluating its coverage defenses.[11]

As discussed above, there is a dispute regarding the contents of the supposed detailed reports that potentially reveal confidential information to Aspen. Ou has not met his burden to establish that Aspen had inappropriate control over Ou's defense.

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[9] Ou states that he asked for and received these supposedly detailed reports from Kiefer. See Ou's 2nd Decl. ¶ 5.

[10] Aspen asserts it did hire an expert, but Ou replies Aspen did so only after this motion was filed. In its Appl. for Leave, Aspen asserts that it hired a standard of care expert in early 2018 and Ou was made aware of the expert's conclusions in May 2018. Appl. for Leave, Ex. A at 6-7. Aspen also argues it hired a forensic economist in May 2018. Id. The Court need not resolve this dispute.

[11] Ou responds that Aspen has made allegations that do not appear to be from information supplied by Ou. Dkt. 46-1 ¶ 78.

Factual Overlap

The Parties dispute whether there is factual overlap between the instant action and the Limon Action.[12]

Ou contends the factual overlap between Aspen's allegations and the Limons' allegations results in Kiefer's ability to control the outcome of the instant action: specifically, that facts that can be used to show Ou had a reasonable basis for believing an incident might evolve into a claim or suit (i.e. Exclusions D or S) overlap with facts that might be used to establish Ou committed medical malpractice.

Aspen claims the coverage questions do not rely on facts to be adjudicated in the Limon Action.[13] Aspen maintains these issues do not require Aspen to prove Ou breached his duty of care or that he is in any way liable to the Limons – only whether, under Exclusion S(2), Ou knew about the incident[14] or any claim before the Policy period.

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[12] Ou also disputes that he had prior notice of the decedent's relatives' (Limons) intent to sue.

[13] Aspen amended its first complaint (i.e. FAC) to clarify that it was not seeking declaratory relief under Section VII.D(1) (i.e. Exclusion D(1)), that a professional duty had been breached. However, the FAC does seek declaratory relief under Exclusion D(1). Aspen states it would stay discovery and disposition of Exclusion D(1). See FAC ¶¶ 13, n. 2, 16. n. 3. Aspen filed its FAC after Ou filed his partial motion for summary judgment; therefore, Ou was unaware of Aspen's willingness to stay discovery on the first prong until he received Aspen's Response.

[14] "Incident means any act, error, or omission, or misstatement or misleading statement by you in rendering of or failure to render professional services. All such acts, errors, or omissions causally related to the rendering of or failure to render professional services to one person shall be considered one incident.

The Court is not convinced by Aspen's argument. Aspen does concede that the three dispositive issues in its action all turn "upon what Dr. Ou knew regarding the incident or claim and when he knew it." See Resp. at 10-11. The Court agrees with Ou that facts needed to prove exclusion under Exclusion (D)(2) would overlap, at least in part, with facts that might be used to prove Ou's liability in the Limon Action.[15]. The Court agrees with Ou that overlapping dispositive facts include those related to (1) Ou's actions and statements made during and after Limon's surgery, (2) any reports made during or post-operation related to Limon's medical care, (3) Limon's medical condition, prior to, during, and after surgery, (4) any events or follow-up acts including those by Ou, and (5) what knowledge Ou had or should have had compared against expert testimony regarding medical standards of care.[16] Further, Aspen's argument that it is not in its interest to establish Ou's negligence in the Limon is not entirely correct.

It is in Ou's interest in the Limon Action that Kiefer marshal facts that establish Ou's actions did not amount to a breach of his professional duties. But it is in Aspen's interest here to marshal

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. . ." Lowe Decl., Ex. 3 at 3. The Court need not decide whether to accept Aspen's interpretation of this language at this stage of the proceedings.

[15] "In any medical malpractice action, the plaintiff must establish: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." Borrayo v. Avery, 2 Cal. App. 5th 304, 310 (2016) (quoting Hanson v. Grode, 76 Cal. App. 4th 601, 606 (1999)) (internal quotations and ellipsis omitted).

[16] In its Appl. for Leave, Aspen does not directly address Ou's points here. Appl. for Leave, Ex. A at 3. Instead, Aspen argues that the Limon Action concerns what Ou did before Limon's death, while the instant action concerns what Ou did after Limon's death. Id. at 3.

facts that establish the contrary – or at the very least, undermine Ou's defense with facts that establish Ou had at least a reasonable basis to believe that his medical treatment of Limon would result in a lawsuit.[17] This results in an incentive for Aspen to attach liability to Ou. Therefore, because the Parties do not dispute that Aspen's claims turn on what Ou "knew regarding the incident or claim and when he knew it," there is an actual conflict of interest and Ou has met his burden to show that, as a matter of law, he has a right independent counsel at Aspen's expense. See Gafcon, 98 Cal. App. 4th at 1422; see also Gulf Ins. Co., 79 Cal. App. 4th at 131.

Ou's motion for independent counsel at Aspen's expense is GRANTED.[18]

B. Stay of the Instant Case

Ou requests a stay pursuant to Landis and in consideration of Montrose I and Montrose II. Mot. at 18-19 (citing Landis v. N. Am. Co., 299 U.S. 248, 254 (1936); Montrose Chem. Corp. v. Superior Court, 6 Cal. 4th 287, 301 (1993) (Montrose I); Montrose Chem. Corp. v. Superior Court (Canadian Universal Ins. Co.), 25 Cal. App. 4th 902 (1994), as modified (June 30, 1994) (Montrose II). The Parties also assume that the California abstention doctrine in Montrose I and II controls here. The issue is more

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[17] Ou also argues that Aspen misinterprets Exclusion S to permit an exclusion simply if the insured knew of an incident prior to the Policy's inception. Ou asserts that Aspen's interpretation would render the Policy's retroactive date meaningless, which is contrary to the canons of contract interpretation.

[18] Ou wants Alphonsie Nelson and Tonie Discoe of Bassett, Discoe, McMains & Kargozar to represent him in the Limon Action. Lowe Decl., Ex. 6 at 1. The firm rate is $185 per hour, a rate comparable to the rates included in Kiefer's retainer agreement. See Ou's 1st Decl., Ex. 1 at 2.

complicated than the Parties seem to think it is, but the Court need not analyze the issue further here. Suffice it to say that the Court evaluates Ou's motion for a stay under the Landis doctrine, which encompasses the factors in Montrose I and II.

A district court has the inherent power to stay proceedings in one action until a decision is rendered in another action by taking into consideration the economy of time and effort for the court, attorneys, and litigants. Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). A district court can grant a stay even if the issues in the separate action are not necessarily controlling of the action before it. Leyva v. Certified Grocers of California, Ltd., 593 F.2d 857, 863-64 (9th Cir. 1979). A separate proceeding is related to the federal action if the proceeding will likely settle and simplify issues in the federal suit. Landis, 299 U.S. at 256. In determining whether to grant a stay, the district court must weigh competing interests:

> (1) whether there is a fair possibility that a stay will cause damage to someone other than the movant, Landis, 299 U.S. at 255; (2) whether a party will suffer hardship or inequity if a stay is not granted, id.; (3) whether the stay will simplify or complicate issues, proof, and questions of law thereby promoting the orderly course of justice, id. at 256; CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962); and (4) whether the stay is definite or will result in undue delay. Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066-67 (9th Cir. 2007).

Case management reasons alone are likely an insufficient ground to stay proceedings. Dependable Highway, 498 F. 3d at 1066.

Damage to Aspen

Aspen argues a stay will be harmful because it must "expend its resources with the risk that it will not recover costs in the future." Resp. at 12. Other courts have rejected this argument, "particularly because advancing defense costs is 'part of an insurer's obligation and costs of doing business.'" Zurich American Insurance Company, No. 18-CV-05345-LHK, 2019 WL 570760, at *5 (collecting cases). Therefore, this factor weighs in favor of a stay.

Harm and Inequity from Denying Stay and Orderly Administration of Justice

Ou contends he will be prejudiced for several reasons if the stay is not granted.

First, Ou asserts that Aspen is effectively joining forces with the Limons because Aspen's coverage claims assert facts that essentially aid them in their case against Ou. Aspen responds that there is no factual overlap between the two actions and it has no incentive to make it easier for the Limons to prevail against Ou..

Ou next argues if the instant action proceeds, Ou will be forced to engage in a "two-front war" between the Limons and Aspen. Aspen counters that the existence of an underlying action is insufficient to stay the case and a stay is not warranted because litigation here does not interfere with the Limon Action.

Finally, Ou contends that because of the factual overlap between Aspen's claims and the Limon Action, Ou may be collaterally estopped from contesting issues in one of the proceedings because of some determination in the other. Aspen counters there is no risk of collateral estoppel because Aspen does not wish to have the issue of whether Ou breached his

professional duty adjudicated while the Limon Action is still pending.

Aspen argues it will be prejudiced if a stay is granted because it will continue to have to pay for a legal defense that it does not owe to Ou. Aspen also contends that while the coverage issues persist, it may have to accept a settlement offer in the Limon Action.

The Court finds Ou would be unfairly prejudiced if a stay were denied. As stated above, there is factual overlap between the actions, and the findings in this case could negatively impact Ou's defense in the Limon Action. Aspen's prejudice arguments are not convincing. As already addressed, insurers are in the business of advancing defense costs. Therefore, these two factors weigh in favor of a stay.

Whether the Stay Results in Undue Delay

The Limon Action is currently stayed due to a bankruptcy filing by an insurer for a co-defendant. The Parties did not offer any further information. This factor appears to weigh in favor of a stay – at least until the state court stay is lifted.

The Court Grants a Partial Stay

As the Court indicated at oral argument, the parties may proceed with discovery and motions relating to whether a notice of intent to sue was sent and received by Ou, and whether Ou had notice of the lawsuit before the date of service. Ou's motion for a stay of this action is otherwise GRANTED.

IV. CONCLUSION

Ou's motion for summary judgment is GRANTED as to independent counsel and GRANTED IN PART as to a stay.

IT IS SO ORDERED.

Date: March 14, 2019

Dale S. Fischer
United States District Judge