

## Insured's Motion to Stay Carrier's Declaratory Relief Action Is Denied Where Court Found It Could Resolve the Coverage Dispute Without Reaching the Merits of the Underlying Action

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*Columbia Cas. Co. v. Abdou*, 2015 U.S. Dist. LEXIS 169036 (S.D. Cal. Dec. 16, 2015)

In *Columbia*, the Southern District of California held that a carrier's declaratory relief action could proceed while the underlying action against the insured was still pending, as the district court found that it could resolve the coverage dispute without reaching the merits of the underlying action filed against the insured.

*Columbia* arose out of a dispute between a professional liability carrier and its insured involving whether an underlying action brought by the insured's client was excluded from coverage. The client initiated an action against the insured alleging that he had lost more than \$3,000,000 as a result of a premium financed life insurance agreement that the insured brokered on his behalf. The complaint further alleged that the insured made misrepresentations regarding future premium payments. The carrier provided the insured with a defense under a reservation of rights and initiated the *Columbia* action in which it argued that coverage was excluded under the "premium finance" and "premium payment guaranty" exclusions of its policy.

The insured filed a motion to stay, which was denied by the court. In allowing the coverage action to proceed, the court explained that the "declaratory relief action [does not] concern whether [the insured] actually did the things [the underlying plaintiff] allege[d]. Instead, it concerns the distinct question of whether [the underlying plaintiff's] claims against [the insured] fall under the exclusions in the insurance policy." Because the court found that it could resolve the coverage dispute "without reaching the merits" of the underlying claims by "simply interpreting the policy's terms and examining the claims" of the underlying lawsuit, it denied the motion to stay. It is also noteworthy that the court denied the insured's motion to dismiss the coverage action and granted the insurer's motion for summary judgment, finding that the underlying action arose out of the insured's sale of premium financed life insurance.

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