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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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NORTHROP GRUMMAN CORPORATION,)	Case No. CV 05-08444 DDP (PLAx)
)	
Plaintiff,)	ORDER DENYING MOTION TO DISMISS
)	[Motion filed on 12/01/05]
v.)	
)	
FACTORY MUTUAL INSURANCE COMPANY,)	
)	THIS CONSTITUTES NOTICE OF ENTRY
Defendants.)	AS REQUIRED BY FRCP, RULE 77(d).

This matter is before the Court on the defendant's motion to dismiss the case for failure to state a claim or in the alternative to stay the case pending exhaustion of primary insurance policies. After reviewing the submissions by the parties, the Court denies the motion and adopts the following order.

I. BACKGROUND

The plaintiff, Northrop Grumman Corporation ("Northrop"), filed this action in state court to collect allegedly bargained-for coverage under an excess property insurance policy for losses it suffered due to Hurricane Katrina. Northrop purchased an excess

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1 property insurance policy from the defendant Factory Mutual
2 Insurance Company ("Factory Mutual"). The plaintiff contends that
3 this policy should have protected it against losses from Hurricane
4 Katrina. Northrop asserts that Factory Mutual is now refusing to
5 cover losses it categorizes as resulting from "storm surges and
6 hurricane-driven water." (Compl. 2.)

7 After removing the case to federal court, Factory Mutual now
8 brings a motion to dismiss the case for failure to state a claim.
9 Specifically, Factory Mutual asserts that Northrop's case is not
10 ripe. Factory Mutual contends that the suit is premature because
11 (1) the primary insurance policies have not yet been exhausted and
12 (2) Northrop has not fulfilled the contractual conditions precedent
13 to bringing suit against Factory Mutual. (Mot. 2.)

14 In the alternative, Factory Mutual moves for an order staying
15 the action "until such a time as the primary policies become
16 exhausted and Northrop fulfills the conditions precedent to
17 bringing the suit." (Id.)

18
19 **II. DISCUSSION**

20 A. Motion to Dismiss

21 Under Federal Rule of Civil Procedure 12(b)(6), a court must
22 dismiss a complaint if it fails to state a claim upon which relief
23 can be granted. "A complaint should not be dismissed unless it
24 appears beyond doubt that the plaintiff can prove no set of facts
25 in support of the claim that would entitle the plaintiff to
26 relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The Court,
27 however, need not accept as true allegations that contradict
28 matters properly subject to judicial notice or by exhibit. Mullis

1 v. U.S. Bankr. Ct., 828 F.2d 1385, 1388 (9th Cir. 1987). The Court
2 is not required to accept as true allegations that are merely
3 conclusory, unwarranted deductions of fact, or unreasonable
4 inferences. See Clegg v. Cult Awareness Network, 18 F.3d 752,
5 754-55 (9th Cir. 1994). In deciding a Rule 12(b)(6) motion to
6 dismiss, the Court is required to assume that all allegations in
7 the complaint are true, and must draw all reasonable inferences in
8 the non-moving party's favor. Usher v. City of Los Angeles, 828
9 F.2d 556, 561 (9th Cir. 1987).

10 Factory Mutual contends that Northrop's suit is premature
11 because Northrop has not exhausted its primary insurance coverage.
12 Factory Mutual argues that it is inherent in the nature of an
13 "excess" insurance policy that claims against primary insurance
14 policies must be exhausted before claims can be asserted under an
15 excess policy. However, there is no legal requirement of such a
16 configuration. In cases cited for this proposition by Factory
17 Mutual (including this Court's decision in Gen. Star Nat'l Ins.
18 Corp. V. World Oil Co, 973 F.Supp. 943, 949 (C.D.Cal. 1977)), the
19 underlying insurance contracts included an exhaustion requirement.
20 The plaintiff asserts that its insurance policy contains no such
21 requirement. It is undisputed that the excess insurance policy only
22 covers claims that go beyond those covered by the primary policies,
23 but this does not automatically require a certain order or timing
24 for filing claims. Further, California courts have specifically
25 held that there is no obligation to exhaust underlying insurance
26 claims before bringing actions related to excess insurance
27 policies. Lockheed Corp v. Continental Ins. Co., 134 Cal.App.4th
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1 187, 220 (2005); Ludgate Ins. Co. V. Lockheed Martin Corp., 82
2 Cal.App.4th 592, 606 (2000).

3 Factory Mutual also argues that Northrop's claims must fail
4 because Northrop has not fulfilled contractual conditions precedent
5 to the filing of suit. (Mem. P&A. 10.) Specifically, Factory Mutual
6 presents evidence from the insurance policy between the parties
7 asserting that Northrop should not be permitted to go forward with
8 its suit because it did not properly submit a "proof of loss" as
9 required by the insurance policy. (Id. at 10-12.) Northrop avers
10 that it did properly submit a proof of loss, and further argues
11 that Factory Mutual waived its right to require a "proof of loss"
12 by rejecting claims before Northrop was even able to file its
13 "proof of loss." (Opp'n 2.) Factory Mutual has allegedly already
14 taken the position that it will "not pay for any of Northrop's
15 losses from storm surges and hurricane-driven water." (Compl. 2.)
16 On October 4, 2005, Factory Mutual's adjuster allegedly stated that
17 Factory Mutual was not going to cover any damages caused by "flood
18 peril" (as opposed to "wind peril"). (Compl. 18.) Construing facts
19 in favor of the non-moving party, the Court declines to grant the
20 motion to dismiss on this ground.

21 B. Motion to Stay

22 The Court has the inherent power to stay proceedings. Landis
23 v. N. Am. Co., 299 U.S. 248, 254 (1936). This power to stay is
24 "incidental to the power inherent in every court to control the
25 disposition of the causes on its docket with economy of time and
26 effort for itself, for counsel, and for litigants." Id. When
27 reviewing a motion to stay, the Court considers: (1) the potential
28 prejudice to the non-moving party; (2) hardship and inequity to the

1 moving party if the action is not stayed; and (3) the judicial
2 resources that would be saved by avoiding duplicative litigation
3 Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal.
4 1997).

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5 Factory Mutual asserts that Northrop would suffer no prejudice
6 by staying the action. Northrop disputes this contention asserting
7 that its losses from the hurricane are great, and it has a strong
8 interest in expeditious resolution of the insurance dispute. (Opp'n
9 21.)

10 Factory Mutual contends that going forward with the
11 proceedings at this stage will burden Factory Mutual greatly by
12 forcing it to engage in "expensive and time-consuming discovery and
13 litigation to determine coverage issues that are neither ripe nor
14 justiciable." (D's P&A 13.) The Court finds this argument circular
15 and unpersuasive. It is not yet proven that this case is neither
16 ripe nor justiciable, so this contention should not serve as a
17 basis for staying the case. Indeed, California case law indicates
18 that the case is ripe. See Lockheed Corp v. Continental Ins. Co.,
19 134 Cal.App.4th 187, 220 (2005). Further, the defendant does not
20 explain why it will save money by deferring this litigation.

21 Factory Mutual argues that the Court's time and resources will
22 be conserved by staying this action because it is not yet ripe.
23 Again, because the matter does appear ripe, this argument is
24 unpersuasive. Additionally, interests of the public at large do not
25 warrant granting a stay in this matter.

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1 III. CONCLUSION

2 For the foregoing reasons the Court denies both the motion to
3 dismiss and the motion to stay.

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5 IT IS SO ORDERED.

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8 Dated: 1-9-06


DEAN D. PREGERSON
United States District Judge

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