IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,	)	
Plaintiff,	)	
v.	)	C.A. No. N13C-07-308 MMJ CCLD
TURNER CONSTRUCTION COMPANY, 5th ROCK, LLC, a Delaware Limited Liability Company, and LIBERTY MUTUAL FIRE INSURANCE COMPANY,	)	
Defendants.	)	

Submitted: December 9, 2013
Decided: February 17, 2014

Upon Defendants' Motion to Dismiss
DENIED

Upon Defendants' Alternative Motion to Stay
GRANTED

OPINION

Robert J. Cahall, Esquire, McCormick & Priore, P.C., Jay Lavroff, Esquire (Argued), Andrew J. Gibbs, Esquire, Lindabury, McCormick, Estabrook & Cooper, P.C., Attorneys for Plaintiff

Colm Connolly, Esquire, Amy M. Dudash, Esquire, Morgan, Lewis & Bockius LLP, Jeffrey J. Vita, Esquire (Argued), Cristina M. Lopez, Esquire, Saxe Doernberger & Vita, P.C., Attorneys for Defendant Turner Construction Company

David J. Baldwin, Esquire (Argued), Janine L. Hochberg, Esquire, Potter Anderson & Corroon LLP, Edward A. Galloway, Esquire, Jackson, DeMarco, Tidus & Peckenpaugh, Attorneys for Defendant 5th Rock, LLC

Daniel A. Griffith, Esquire (Argued), Whiteford Taylor & Preston LLC, Attorney for Defendant Liberty Mutual Fire Insurance Company

JOHNSTON, J.

FACTUAL CONTEXT

This is a dispute over insurance coverage arising from the alleged defective construction of the Hard Rock Hotel ("Project") in San Diego, California. T-12 Three, LLC ("T-12 Three") is the present owner of the Project. 5th Rock, LLC ("5th Rock") was the Project's developer. 5th Rock hired Turner Construction Company ("Turner") as the general contractor for the Project. Numerous subcontractors worked on the Project.

National Union issued umbrella liability insurance policy BE 2860822 ("National Union Policy") to 5th Rock and Turner, identifying 5th Rock as the "Developer" and Turner as the "Contractor." The National Union Policy states that the general liability insurance provided by Turner for the Project would be through a Contractor Controlled Insurance Program ("CCIP").

The primary general liability coverage under the CCIP was through Liberty Mutual Fire Insurance Company ("Liberty Mutual"), policy RG2-625-092285-015 ("Liberty Mutual Policy"). The Liberty Mutual Policy provides coverage for the "First Named Insured," identified as Turner, and "Additional Named Insureds," including "all subcontractors of any tier, as their interest may appear, for whom the First Named Insured has agreed by contract to provide general liability coverage under the owner [sic] controlled insurance program."

The National Union Policy provides the first layer of excess coverage above the Liberty Mutual Policy. The National Union Policy provides coverage for each and every "Insured," which includes the "Named Insured" and "any person or organization, other than the Named Insured, included as an additional insured under Scheduled Underlying Insurance, but not for broader coverage than would be afforded by such scheduled underlying insurance." Turner is identified as the "Named Insured." The Liberty Mutual Policy is identified as the "Scheduled Underlying Insurance."

PROCEDURAL CONTEXT

T-12 Three filed suit ("Underlying Suit") against Turner, 5th Rock, and DOES 1 through 500 on October 12, 2011, in the Superior Court of California, Orange County. In the Underlying Suit, T-12 Three alleges that the Project has suffered property damage due to construction defects. T-12 Three later added fourteen subcontractors ("Subcontractors") as defendants.

National Union filed the Delaware action against Turner, 5th Rock, and Liberty Mutual ("Movants") on July 23, 2013. National Union seeks: (1) a declaratory judgment that it has no duty to defend, indemnify, or provide coverage for Turner or 5th Rock for the claims asserted by T-12 Three in the Underlying Lawsuit; (2) a declaratory judgment that the limits of the Liberty Mutual Policy are not exhausted; (3) for costs of the Delaware suit; and (4) other relief as the Court

deems equitable and just. Movants filed this Motion to Dismiss, or in the Alternative, to Stay on three grounds: (1) non-compliance with the Delaware Declaratory Judgment Act; (2) violation of Rule 19; and (3) *forum non conveniens*.

On August 1, 2013, Turner filed a declaratory judgment action in the California Superior Court, San Diego County, against National Union, Liberty Mutual, 5th Rock, and the fourteen Subcontractors. Turner also named DOES 1 through 300 as defendants. The DOES are additional subcontractors who may seek coverage under the CCIP for the claims in the Underlying Suit. Turner is seeking declaratory relief regarding National Union's defense and indemnity coverage obligation in the Underlying Suit. National Union filed a Motion to Dismiss or Stay on *forum non conveniens* grounds. The California Superior Court denied the motion on December 6, 2013.

STANDARD OF REVIEW

"A motion to stay or dismiss on grounds of *forum non conveniens* is addressed to the sound discretion of the Court."[1] "[W]hen a Delaware action is considered first-filed or when multiple actions are contemporaneously filed, this Court examines a motion to stay 'under the traditional *forum non conveniens* framework without regard to a *McWane*-type preference of one action over the

[1] *Tex. Instruments Inc. v. Cyrix Corp.*, 1994 WL 96983, at *2 (Del. Ch.); *see Williams Gas Supply Co. v. Apache Corp.*, 594 A.2d 34, 37 (Del. 1991).

other.'"[2] When applying the *forum non conveniens* analysis, courts "always must consider judicial economy and principles of comity."[3]

To dismiss a first-filed action based on *forum non conveniens*, the movant "must establish with particularity that they will be subjected to overwhelming hardship and inconvenience if required to litigate in Delaware."[4]

Where the actions are considered contemporaneously filed, "the movant must demonstrate that litigating in Delaware would cause overwhelming hardship," to justify a dismissal.[5] To justify a stay where the actions are contemporaneously filed, "the movant need only demonstrate that the preponderance of applicable forum factors 'tips in favor' of litigating the dispute in the non-Delaware forum."[6] "In balancing all of the relevant factors, the focus of the analysis should be which forum would be the more 'easy, expeditious, and inexpensive' in which to litigate."[7] Delaware courts have held that the overwhelming hardship standard also applies where granting a stay of a

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[2] *Rosen v. Wind River Sys., Inc.*, 2009 WL 1856460, at *3 (Del. Ch.) (citing *Rapoport v. The Litig. Trust of MDIP, Inc.*, 2005 WL 3277911, at *2 (Del. Ch.)).

[3] *Id*.

[4] *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1199 (Del. 1997).

[5] *BP Oil Supply Co. v. ConocoPhillips Co.*, 2010 WL 702382, at *2 (Del. Super.).

[6] *Id*.

[7] *Royal Indem. Co. v. Gen. Motors Corp.*, 2005 WL 1952933, at *7 (Del. Super.) (citing *HFTP Inv., L.L.C. v. ARIAD Pharm., Inc.*, 752 A.2d 115, 122 (Del. Ch. 1999)).

contemporaneously filed action would likely have the same ultimate effect as a dismissal.[8]

Delaware courts determine whether to dismiss or stay an action based on *forum non conveniens* by evaluating six factors, known as the *Cryo-Maid* factors.[9] The Court will consider: (1) whether Delaware law governs the case; (2) the relative ease of access to proof; (3) the availability of compulsory process for witnesses; (4) the pendency of any similar action in another jurisdiction; (5) the possibility of a need to view the premises; and (6) all other practical considerations that would make the trial easy, expeditious, and inexpensive.[10]

ANALYSIS

This Delaware Action is Not Entitled to Great Deference as First-Filed

A plaintiff's choice of forum generally is entitled to great deference. However, the forum choice is not immune from scrutiny.[11] The Court takes into account the circumstances surrounding the filing of the actions to determine if the

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[8] *BP Oil Supply Co. v. ConocoPhillips Co.*, 2010 WL 702382, at *3; *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d 106, 117 (Del. Ch. 2009).

[9] *Certain Underwriters at Lloyds Severally Subscribing Policy No. DP359504 v. Tyson Foods, Inc.*, 2008 WL 660485, at *3 (Del. Super.).

[10] *Gen. Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681, 684 (Del. 1964); *Parvin v. Kaufman*, 236 A.2d 425, 427 (Del. 1967).

[11] *Williams Gas Supply Co. v. Apache Corp.*, 1991 WL 18091, at *2 (Del. Super.).

first-filed action should be given great deference.[12] Where the actions were filed within the same general time frame, the Court considers the actions simultaneously filed so as to avoid a "race to the courthouse."[13]

The Court may consider if the suit was filed in anticipation of litigation when determining if deference is applicable.[14] The anticipatory use of a declaratory judgment action "for the purpose of gaining an affirmative judgment in a favorable forum requires a closer look at the deference historically accorded a prior filed action."[15]

The Court also looks at the natural alignment of the parties. In *E-Birchtree, LLC v. Enterprise Products Operating, L.P.*, this Court considered whether to stay

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[12] *Playtex, Inc. v. Columbia Cas. Co.*, 1989 WL 40913, at *4 (Del. Super.); *see Air Products & Chemicals Inc. v. Lummus Co.*, 252 A.2d 545 (Del. Ch. 1968), *rev'd on other grounds*, 252 A.2d 543 (Del. 1969).

[13] *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d at 116 (considering actions filed on November 6, 2007 and November 9, 2007, as filed contemporaneously); *see, e.g.*, *Playtex, Inc. v. Columbia Cas. Co.*, 1989 WL 40913, at **2, 4 (declining to give first-filed deference to an action filed in Illinois thirteen days before the Delaware action, where the Illinois action was filed in anticipation of litigation by the natural plaintiff); *Williams Gas Supply Co. v. Apache Corp.*, 1991 WL 18091, at **1-2 (declining to give first-filed deference to the Delaware declaratory judgment action which was filed two weeks before the competing action, where the Delaware action was filed in anticipation of a suit by the natural plaintiff.).

[14] *Playtex, Inc. v. Columbia Cas. Co.*, 1989 WL 40913, at *4.

[15] *Id.*; *see Air Products & Chemicals Inc. v. Lummus Co.*, 252 A.2d 545 (Del. Ch. 1968), *rev'd on other grounds*, 252 A.2d 543 (Del. 1969).

an action based on *forum non conveniens*.[16] The *E-Birchtree* Court stayed the first-filed Delaware action, even though the *forum non conveniens* factors did not show sufficient hardship to justify a stay or dismissal of the action. The Court considered the anticipatory nature of the Delaware action and the natural alignment of the parties.[17] The Court reiterated that Delaware courts take a "rather dim view of declaratory judgment claims of non-breach made for purposes of forum shopping."[18]

This Court considered the circumstances surrounding the first-filed action in *Playtex, Inc. v. Columbia Casualty Company*.[19] Taking into account the parties' prior actions, the Court found it was "reasonable to presume that [the natural defendant] would have filed suit if [the insurer] had denied coverage."[20] The Court found that where a first-filed declaratory judgment action was filed in an anticipatory nature, it was not "entitled to the deference generally afforded first filed actions."[21]

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[16] 2007 WL 914644, at *3 (Del. Super.).

[17] *Id*. at *3.

[18] *Id*. (citing *In re Delta & Pine Land Co. S'holders Litig.*, 2000 WL 1010584, at *5 (Del. Ch.)).

[19] 1989 WL 40913, at *4.

[20] *Id*. at *5.

[21] *Id*.; *see Williams Gas Supply Co. v. Apache Corp.*, 1991 WL 18091, at *2 (finding that a first-filed action filed by the natural defendant in anticipation of litigation "should not be awarded the deference owed to first filed suits.").

In *In re IBP Shareholders Litigation*, the Delaware Chancery Court found that the first-filing party, the natural defendant, was "jockeying for position," and considered the action contemporaneous with the later-filed action in another jurisdiction.[22] The Chancery Court reasoned that such behavior "has been an important factor in Delaware decisions which have denied 'first-filed' status to such suits."[23]

National Union relies on *Monsanto Company v. Aetna Casualty & Surety Company* ("*Monsanto*")[24] in support of its position that the underlying claimants are not indispensible parties and the Subcontractors' interests are adequately represented by Turner, the policyholder. Monsanto was the insured party and filed suit in Delaware against 37 defendant insurance companies to determine the insurers' obligations.[25] One of the insurers filed suit in the United States District Court for the District of Connecticut the day before Monsanto filed suit in Delaware.[26] The Delaware action was more comprehensive than the Connecticut action.[27] The Connecticut District Court stayed the action pending the ruling in the

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[22] 2001 WL 406292, at *8 (Del. Ch.).

[23] *Id.* (citing *Williams Gas Supply Co. v. Apache Corp.*, 594 A.2d at 36).

[24] 559 A.2d 1301 (Del. Super. 1988).

[25] *Id*. at 1302.

[26] *Id*. at 1303.

[27] *Id*.

Delaware case to avoid duplicative and piecemeal litigation.[28] The Delaware Superior Court denied certain defendant insurance companies' Motion to Dismiss based on *forum non conveniens*.[29]

The *Monsanto* Court considered public policy issues in its *forum non conveniens* analysis.[30] The Court recognized a line of cases holding that incorporation alone "is not sufficient contact with Delaware to support the selection of Delaware as a forum."[31] However, the Court found that Delaware's interest in providing its citizens with a forum to seek justice, along with the Delaware ties in the case, "establish a sufficient nexus to justify maintaining this case in the State of Delaware."[32] In *Monsanto*, the plaintiff and eight of the defendants were incorporated in Delaware. All of the defendants allegedly derived income by writing policies in Delaware, and offered their insurance policies for sale in Delaware.[33]

This action is distinguishable from *Monsanto*. National Union, the plaintiff in this action, is the natural defendant. This case is not more comprehensive than

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[28] *Id*. at 1304.

[29] *Id*. at 1316.

[30] *Id*. at 1314-15.

[31] *Id*. at 1315; *see Tex. City Ref., Inc. v. Grand Bahama Petroleum Co.*, 347 A.2d 657, 658 (Del. 1975).

[32] *Monsanto Co. v. Aetna Cas. & Sur. Co.*, 559 A.2d at 1315-16.

[33] *Id*. at 1315.

the competing California action. In the competing action, the California Superior Court denied National Union's Motion to Dismiss, or in the Alternative, to Stay on the grounds of *forum non conveniens*. It is uncontested that 5th Rock's incorporation is the sole connection with Delaware.

The Court finds that it is a close question whether the actions were filed contemporaneously. National Union filed this action in Delaware on July 23, 2013. Turner filed its California suit on August 1, 2013.

On June 26, 2013, National Union issued a reservation of rights letter to Turner. The letter stated that National Union reserved all of its rights, "including the right to deny coverage." In the letter, National Union summarized the claims against Turner and raised issues about coverage, as well as the exceptions that potentially could preclude coverage. On July 22, 2013, National Union issued a supplemental reservation of rights letter to Turner. The difference between the supplemental letter and the original letter is that a claim number was added to the supplemental letter. The reservation of rights letters can be viewed as National Union signaling its intention to deny coverage.

The parties in the Delaware action are (re)aligned properly in the California action as natural plaintiff and defendant.[34] Seeking a declaratory judgment prior to

[34] *See E-Birchtree, LLC v. Enterprise Prod. Operating, L.P.*, 2007 WL 914644, at *3.

the natural plaintiff bringing an action can be viewed as "filing in anticipation" of litigation.

Taking into account the natural alignment of the parties and the appearance of anticipatory filing, the Court will balance the *forum non conveniens* factors without affording great deference to the Delaware action.

Forum Non Conveniens

The Court examines the following six factors to determine if a dismissal or stay is appropriate: (1) whether Delaware law governs the case; (2) the relative ease of access to proof; (3) the availability of compulsory process for witnesses; (4) the pendency of any similar action in another jurisdiction; (5) the possibility of a need to view the premises; and (6) all other practical considerations that would make the trial easy, expeditious, and inexpensive.[35]

The first factor, the applicability of Delaware law, does not favor the Delaware suit. The Court considers "whether the controversy is dependent upon the application of Delaware law which the courts of this State more properly should decide than those of another jurisdiction."[36] However, a finding that Delaware law does not apply is not dispositive in the *forum non conveniens*

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[35] *Gen. Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d at 684; *Parvin v. Kaufman*, 236 A.2d at 427.

[36] *Ison v. E.I. DuPont de Nemours & Co., Inc.*, 729 A.2d 832, 838 (Del. 1999).

analysis.[37] Movants argue that California law applies. National Union argues that New York law applies. While Delaware courts are capable of applying the law of other states,[38] this case does not require the application of Delaware law which would more properly be decided in Delaware than another jurisdiction.

The second factor, the relative ease of access to proof, is neutral. "The proximity of the proposed forum to the necessary proof is a meaningful consideration in assessing the ease of access to such proof."[39] While proximity is "an important consideration under the access to proof factor, it is not dispositive in determining overwhelming hardship."[40] Movants contend that the California action would improve access to proof in the form of testimony from California-based Subcontractors and business records located in California. National Union contends that its proof is concentrated on the East Coast. This is a dispute over insurance coverage, which implies that the relevant proof largely will be documentary. Neither party claims to have sources of proof located in Delaware.

The third factor, the availability of compulsory process for witnesses, slightly favors the California action. The Court considers whether "another forum

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[37] *Id*. at 844.

[38] *Azurix Corp. v. Synagro Technologies, Inc.*, 2000 WL 193117, at *5 (Del. Ch. 2000).

[39] *In re Asbestos Litig.*, 929 A.2d 373, 383 (Del. Super. 2006).

[40] *Id*. at 383-84.

would provide a substantial improvement as to the number of witnesses who would be subject to compulsory process."[41] Delaware courts have found that to demonstrate overwhelming hardship, a party must identify the witnesses not subject to compulsory process and the specific substance of their testimony.[42] Movants contend that their witnesses, employees and the Subcontractors, are subject to compulsory process in California. Turner claims that its witnesses, the Subcontractors, are likely to testify regarding the policy exclusions which apply to defective construction claims. National Union contends that its witnesses are located primarily in New York City, as well as in New Jersey and Connecticut. While neither party has witnesses subject to compulsory process in Delaware, the California action clearly has a greater number of witnesses subject to compulsory process. Although Movants have not demonstrated that they would be subject to overwhelming hardship based on the unavailability of compulsory process for witnesses, this factor favors the California action.

The fourth factor, the pendency of a similar action in another jurisdiction, weighs in favor of the California action. In the competing action, the California

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[41] *Azurix Corp. v. Synagro Technologies, Inc.*, 2000 WL 193117, at *6 (citing *Mt. Hawley Ins. Co. v. Jenny Craig, Inc.*, 668 A.2d 763, 769 (Del. Super. 1995)).

[42] *Lee ex rel. Lee v. Choice Hotels Int'l Inc.*, 2006 WL 1148755, at *5 (Del. Super.); *Fres-Co Sys. USA, Inc. v. The Coffee Bean Trading-Roasting, LLC*, 2005 WL 1950802, at *3 (Del. Super.).

Superior Court has denied National Union's Motion to Dismiss on grounds of *forum non conveniens*. Movants contend that allowing the Delaware action to proceed could result in piecemeal litigation, and that complete relief could be afforded by the California Superior Court.

The ability of one court to grant complete relief is not outcome determinative under this prong of the analysis.[43] Both actions are for declaratory judgment concerning the same issue. Neither is substantively more comprehensive. The fact that there is a similar case covering essentially the same dispute among these parties, does not rise to the level of "overwhelming hardship," but does weigh in favor of a stay.[44]

The fifth factor, the possibility of a need to view the premises, is neutral. Turner does not expect a view of the premises will be necessary. However, 5th Rock contends a view of the premises may be appropriate. Delaware courts have recognized that "photographs or other audio-visual aids could be employed as an adequate substitute without any undue inconvenience."[45] In the event a view of the premises becomes necessary, photographs or audiovisual aids could be used.

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[43] *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d at 119.

[44] *See Royal Indem. Co. v. Gen. Motors Co.*, 2005 WL 1952933, at *10 (Del. Super.).

[45] *Tex. Instruments Inc. v. Cyrix Corp.*, 1994 WL 96983, at *6 (Del. Ch.); *see also Ison v. E.I. DuPont de Nemours & Co., Inc.*, 729 A.2d at 837; *Lee ex rel. Lee v. Choice Hotels Int'l Inc.*, 2006 WL 1148755, at *5.

Under the sixth factor, the Court evaluates other practical considerations that would "make the trial easy, expeditious and inexpensive."[46] Movants contend that both the public interest and National Union's motive in filing suit in Delaware favor a dismissal or stay of the Delaware action. Movants argue that National Union was forum shopping by filing in Delaware. National Union contends that litigating in Delaware offers greater access to the relevant proofs and witnesses, therefore resulting in a trial that is less expensive and more expeditious.

The Court considers the public interest.[47] Delaware has an interest in providing its citizens a forum to seek justice.[48] However, Delaware courts have found that incorporation alone is insufficient to mandate Delaware as a forum.[49] In *Royal Indemnity Company v. General Motors Corporation*, this Court found that where the parties' incorporation was the only connection to Delaware, and the case would not be decided upon Delaware law, the circumstances favored a stay of the action.[50]

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[46] *Royal Indem. Co. v. Gen. Motors Corp.*, 2005 WL 1952933, at *11.

[47] *Azurix Corp. v. Synagro Technologies, Inc.*, 2000 WL 193117, at *6.

[48] *Monsanto Co. v. Aetna Cas. & Sur. Co.*, 559 A.2d at 1315.

[49] *Williams Gas Supply Co. v. Apache Corp.*, 594 A.2d at 38; *see Tex. City Ref., Inc. v. Grand Bahama Petroleum Co., Ltd.*, 347 A.2d at 658; *Monsanto Co. v. Aetna Cas. & Sur. Co.*, 559 A.2d at 1315.

[50] 2005 WL 1952933, at *11 (Del. Super.).

The Court considers judicial economy.[51] The competing action has been allowed to proceed in the Superior Court of California. It is likely that if both actions proceed the courts will undergo duplicative efforts.[52] The Court also takes into account the principle of comity between courts.[53]

It is uncontested that the California Superior Court could afford complete relief. Although it is not clear whether declaratory judgment would necessitate joining the Subcontractors as parties, no Subcontractors are in fact parties in this Delaware action. It appears that Delaware has no jurisdiction over any of the Subcontractors.

The Court finds that none of the practical considerations create an "overwhelming hardship" for the Movants that would justify a dismissal. Delaware courts have applied the overwhelming hardship standard when deciding a motion to stay, based on *forum non conveniens*, where the actions were contemporaneously filed and granting a stay would likely have the same effect as a dismissal.[54] The parties have not presented evidence or argued that granting a stay

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[51] *Azurix Corp. v. Synagro Technologies, Inc.*, 2000 WL 193117, at *6.

[52] *See id*. at *7; *E-Birchtree, LLC v. Enterprise Prod. Operating L.P.*, 2007 WL 914644, at *3.

[53] *E-Birchtree, LLC v. Enterprise Prod. Operating L.P.*, 2007 WL 914644, at *3; *Rosen v. Wind River Sys., Inc.*, 2009 WL 1856460, at *7.

[54] *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d at 117; *BP Oil Supply Co. v. ConocoPhillips Co.*, 2010 WL 702382, at *2.

would likely have the same effect as a dismissal. The Court finds that the factors weigh in favor of a stay of the Delaware action.

CONCLUSION

The Court finds that the Delaware action is not entitled to the deference generally afforded to first-filed actions. The Delaware action appears to have been filed in anticipation of future litigation brought by the natural plaintiffs.

Movants have not shown that litigating in Delaware would cause them "overwhelming hardship" under the *Cryo-Maid* factors in the *forum non conveniens* analysis. However, the Court finds that the factors tip the balance in favor of the California action, justifying a stay.

The Court decides this Motion on *forum non conveniens* grounds. Therefore it is not necessary to address Movants' arguments based on the Delaware Declaratory Judgment Act or Rule 19.

THEREFORE, Defendants' **Motion to Dismiss, or in the Alternative, to Stay** is hereby **GRANTED IN PART AND DENIED IN PART**. This Delaware action is hereby stayed pending the resolution of the related action pending before the Superior Court of California, San Diego County, or until such further order of this Court. The parties are directed to submit a status report to this Court on or before six months from the date of this Opinion. The Court will consider lifting

the stay, should the California action not proceed in a manner consistent with prompt and efficient justice.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston