

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AMBULATORY CARE CENTER, PA,

Plaintiff,

-v-

SENTINEL INSURANCE COMPANY, LTD.,

Defendant.

Case No. 1:20-cv-05837-JHR-KMW

**UNOPPOSED MOTION TO STAY LITIGATION PENDING RESOLUTION OF THIRD  
CIRCUIT APPEAL**

Plaintiff, Ambulatory Care Center, PA, by and through its undersigned counsel, hereby moves this Court to stay this litigation and any active deadlines and seeks to have this unopposed Motion be given a Motion Date of **May 17, 2021**. In support thereof sets forth the following:

**I. INTRODUCTION**

Plaintiff brought this single-count action for declaratory relief against Defendant, Sentinel Insurance Company, LTD (hereinafter “Defendant” or “Sentinel”) over coverage for business interruption and lost income suffered as a result of Civil Authority Orders issued in response to the COVID-19 pandemic. Plaintiff is an ambulatory care center that sustained significant business losses when governmental orders arising out of the COVID-19 pandemic prohibited elective medical and surgical procedures. Plaintiff sought a declaratory judgment from this Court that its losses were covered under the terms of the all-risk insurance policy Plaintiff entered into with Defendant.

Defendant filed a Motion for Judgment on the Pleadings (MJOP) on April 16, 2021 in an attempt to immediately dismiss Plaintiff’s Complaint on the basis that 1) the policy’s virus

exclusion bars coverage, and 2) the civil authority orders requiring plaintiff's business to close its doors are not a covered cause of loss. However, the Third Circuit is currently considering a consolidated appeal concerning fourteen similar business interruption cases arising out of the COVID-19 pandemic. *See* Case No. 20-3024, ECF No. 43. The consolidated appeal presents the same common core questions as those in Defendant's MJOP, including, *inter alia*, the application of the policies' virus exclusions vis-à-vis the threshold question of coverage and the interpretation of "physical loss," as well as issues regarding the applicability of the policies' "civil authority" provision. To the extent that the facts in this case are not identical to the cases on appeal, the Third Circuit implicitly understood that nevertheless, the consolidated cases address the same fundamental legal claims when it agreed to consolidate the fourteen cases into a single appeal. Moreover, apparently because the Third Circuit recognized the commonality of the legal questions in the appeals consolidated, the Third Circuit's Consolidation Order goes a step further and provides that for any newly filed appeals, they would be stayed until further order of the Court, presumably because the Third Circuit expects that the resolution of the fourteen appeals will be informative and perhaps determinative of the issues in any newly filed appeal. In fact, some of the appellees in cases that have been consolidated in the appeal are affiliated insurance companies to the Defendant here.<sup>1</sup> Therefore, just as the Third Circuit has ordered a stay of cases, this Court should stay proceedings pending the outcome of the appeals in the Third Circuit as whatever opinion the Third Circuit issues, that opinion will likely be dispositive regarding Defendant's theories for dismissal set forth in its MJOP.

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<sup>1</sup> For example, the Twin City Fire Insurance Company Defendant in the consolidated appeals is part of the Hartford umbrella of insurance carriers, as is Defendant here.

Consequently, Plaintiff now brings the instant Motion to Stay the litigation, including all briefing on Defendant's MJOP, so the Third Circuit can first resolve the legal issues at the heart of Defendant's Motion. As set forth below, Plaintiff believes what makes the most sense from both a fairness and judicial efficiency approach, and in deference to the Court's busy schedule, is to stay the proceedings on the MJOP (just as this Court previously did with discovery) until the appeal has been resolved.

## **II. PROCEDURAL HISTORY**

On May 13, 2020, Plaintiff filed a Complaint against Defendant in this Court. (ECF No. 1). Plaintiff alleges that the all-risk Policy it purchased from Sentinel included coverage for losses incurred when a civil authority forced the closure of the business. (ECF No. 1 at ¶ 19). Plaintiff seeks a declaratory judgment that it is entitled to coverage under the terms of that Policy for losses it sustained as a result of such closures.

On August 3, 2020, Defendant filed an Answer to Plaintiff's Complaint. (ECF No. 5). Following an Initial Status Conference, discovery began in the matter as scheduled, with the parties exchanging information and Magistrate Judge Karen M. Williams holding several telephone conferences to oversee the status of the case. In early April, counsel for Defendant advised Plaintiff of its intention to file a Motion for Judgment on the Pleadings ("MJOP"). In a telephonic conference with the Magistrate Judge on April 6, 2021, both parties advised the Court of this, and the Magistrate entered a stay of discovery pending resolution of the MJOP. (ECF No. 17). Defendant then sought and was granted a short extension, during which time the parties discussed the idea and efficiency of staying the case in light of the consolidated appeal in the Third Circuit. Defendant then formally filed its MJOP on April 16, 2021 (ECF No. 20) and this Court set its Motion deadline for 5/17/2021 (ECF No. 21).

Prior to filing this Motion, counsel for the Plaintiff contacted counsel for the Defendant to determine if the instant Motion to Stay would be opposed. Although Defendant Sentinel does not agree with much of the factual and legal analysis contained in the motion, Defendant does not oppose a stay of this action pending resolution of appeals to the Third Circuit involving Sentinel or its corporate affiliates.

**III. THE COURT SHOULD STAY THIS PROCEEDING PENDING THE OUTCOME OF APPELLATE LITIGATION ON THE SAME LEGAL ISSUES IN THE THIRD CIRCUIT**

**A. Legal Standard**

Plaintiff seeks a stay of this litigation pending the resolution of the Third Circuit's ruling on the consolidated appeal. The power to stay proceedings is inherent in a court's authority "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Cheyney State Coll. Faculty v. Hufstedler*, 703 F.2d 732, 737 (3d Cir. 1983) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The decision to stay "is one left to the district court as a matter of its discretion to control its docket." *Mendez v. Puerto Rican Int'l Cos., Inc.*, 553 F.3d 709, 712 (3d Cir. 2009). Courts generally weigh a number of factors in determining whether to grant a stay, including: (1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether denial of the stay would create "a clear case of hardship or inequity" for the moving party; (3) "whether a stay would simplify the issues and the trial of the case; and (4) "whether discovery is complete and/or a trial date has been set." *See Akishev v. Kapustin*, 23 F. Supp. 3d 440, 446 (D.N.J. 2014)

Where a stay is sought pending resolution of purportedly related litigation, as here, courts consider whether resolution of the related litigation would substantially impact or otherwise render moot the present action. *See, e.g., Bechtel Corp. v. Local 215, Laborers' Int'l Union*, 544 F.2d

1207, 1215 (3d Cir. 1976) (noting that a district court may “hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues”); *Rodgers v. U.S. Steel Corp.*, 508 F.2d 152, 162 (3d Cir. 1975) (“The district court had inherent discretionary authority to stay proceedings pending litigation in another court.”). Consequently, if another litigation is pending, courts may, after balancing these factors, “hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues.” *Bechtel Corp.*, 544 F.2d at 1215; *see also MEI, Inc. v. JCM Am. Corp.*, No. 09–351, 2009 WL 3335866, at \*4 (D.N.J. Oct. 15, 2009) (“A stay is particularly appropriate, and within the court’s ‘sound discretion,’ where the outcome of another case may ‘substantially affect’ or ‘be dispositive of the issues’ in a case pending before a district court.”) (citations omitted).

**B. Imposing A Stay Would Not Prejudice Either Party**

The balance of potential harm to the parties also counsels in favor of a stay. Plaintiff only seeks a stay until the Third Circuit can rule on an appeal that would almost assuredly resolve the underlying issues in this case. Defendant’s only arguable harm is the possibility of a slight delay in the litigation, while the Court awaits the Third Circuit’s decision, which would cause Defendant no harm with respect to the ultimate litigation of this matter. First, mere delay does not, without more, necessitate a finding of undue prejudice and clear tactical disadvantage. *Akishev*, 23 F.Supp.3d at 447. Moreover, since the Defendant is the party that has denied coverage and Plaintiff is the injured party, delay only serves to benefit the insurance company. A stay does not provide Plaintiff with any tactical advantage.

However, if a stay is not granted, Plaintiff is immediately faced with the burden of potentially duplicative litigation in the form of having to brief Defendant’s MJOP. Thereafter, this Court will either opt to hold its decision in abeyance pending the Third Circuit’s ruling, or it will

issue a ruling for which this Court and the parties risk the potential for a subsequent inconsistent ruling by the Third Circuit. In either case, there will be no finality on the MJOP until after the Third Circuit rules on the appeal, and in the interim, this Court would have to administer and control the scheduling of what would likely be wasteful briefing. The potential harm to all parties being subject to this duplicative and burdensome motion practice far outweighs any minimal theoretical harm that would befall Defendant if a stay is granted, in addition to implicating the judicial economy concerns set forth in Section III-D, *infra*. See *New Castle*, 2018 WL 3438841, at \*3. Therefore, the prejudice factor supports the imposition of a stay.

**C. Denying A Stay Would Impose Hardship On Plaintiff**

Denial of a stay would impose a hardship on Plaintiff. As set forth in Section III-B, *supra*, the risk of burdensome, wasteful motion practice and inconsistent rulings is likely to result absent the imposition of a stay. Litigating this MJOP while a court of superior jurisdiction in the very same circuit considers the same arguments creates a substantial risk of competing or inconsistent adjudications. This hardship would not just befall Plaintiff. It would also require this Court to needlessly burden its own docket. This factor also counsels in support of a stay.

**D. Imposing A Stay Would Simplify The Issues**

This factor weighs heavily in favor of a stay. Entering a stay will ultimately simplify the issues contained in the MJOP while promoting judicial efficiency and avoiding duplicative, wasteful litigation. The appeal currently pending before the Third Circuit implicates questions of law (including New Jersey law specifically) on all fours with those contained in Defendant's MJOP, and the Third Circuit's ruling will be authoritative in guiding this Court's decision. For the parties and this Court to expend resources litigating the MJOP without certainty about where the Third Circuit will come down on the very questions presented in the MJOP is antithetical to

the goal of ensuring judicial economy. On the issues presented, the Third Circuit's ruling on the consolidated appeals is extremely likely to not just to simplify the controversy before this Court, but to answer the questions presented. By entering a stay, this Court can ensure that the parties are not required to litigate potentially unnecessary issues, nor would the Court be called upon to expend its own limited resources to rule on matters that will be similarly ruled upon by the Third Circuit.

Another court within this circuit, faced with the prospect of ruling on a dispositive motion regarding business interruption coverage claims under very similar factual circumstances, recently decided *sua sponte* to stay the case pending decision from the Third Circuit, against the very same Defendant as in this case. *See Sidkoff, Pinkus & Green v. Sentinel Insurance Company Limited*, No. 2:20-cv-02083-PD, ECF No. 33 (E.D. Pa Nov. 6, 2020). That decision, to suspend ruling pending the resolution of another action in federal court, is consistent with the standard of judicial efficiency and jurisprudence. *See Cirulli v. Bausch & Lomb, Inc.*, No. CIV.A 08-4579, 2009 WL 545572 at \*2 (E.D. Pa. Mar. 4, 2009). It is entirely inconsistent for the *Sidkoff* case to be stayed and for the instant case to be fully briefed, litigated and ruled upon in light of the consolidated appeals. The facts here are analogous to that case, and the factor of judicial economy therefore dictates that this Court should stay litigation pending the resolution of the Third Circuit's ruling. Moreover, there are several other cases pending in the District Courts in Pennsylvania that were stayed pending the resolution of the appeals in the Third Circuit. *See, i.e. Khalid And Natalie's Service Inc. v. Hospitality Insurance Company*, No. 2:20-cv-00968-NR (W.D. Pa.); *Argenas v. Nationwide Mutual Insurance Company*, No. 2:20-Cv-00770-NR (W.D. Pa.).

**E. Discovery Has Just Begun And No Trial Date Has Been Set**

With respect to the fourth factor, Plaintiff's motion for a stay must be evaluated in accordance with the scope of presently completed discovery and the scheduling of a trial date. *See Actelion Pharms. Ltd. v. Apotex Inc.*, No. CIV. 12-5743 NLH/AMD, 2013 WL 5524078 at \*6 (D.N.J. Sept. 6, 2013). The further along the case is procedurally, and the closer to trial, the less it makes sense for a Court to stay an action. *FMC Corp. v. Summit Agro USA, LLC*, No. CV 14-51-LPS, 2014 WL 3703629, at \*4 (D. Del. July 21, 2014) ("Motions to stay are more likely to be granted when a case is in the early stages of litigation."); *see also Haas v. Burlington Cty.*, No. CIV. 08-1102-JHR/JS, 2009 WL 4250037, at \*2 (D.N.J. Nov. 24, 2009); *Galarza v. Whittle-Kinard*, No. 16-CV-00764-ES/SCM, 2017 WL 2198182, at \*3 (D.N.J. May 18, 2017).

As set forth in Section II, *supra*, discovery was still in its infancy when Defendant informed the Court about its intention to file its MJOP and this Court stayed discovery and all case deadlines. No depositions have been taken (or even noticed), no expert reports have been submitted, and written discovery had just begun to be exchanged before discovery was stayed. A stay is therefore warranted because "no party has engaged in significant production or protracted motion practice." *See Actelion*, 2013 WL 5524078, at \*6. In fact, this Court's willingness to enter a stay of discovery pending resolution of the dispositive motion is all the more reason to stay the MJOP as well, as the same efficiency concerns arising out of this Court's decision to stay discovery are implicated by the Third Circuit appeal. This factor supports the imposition of a stay.



**IV. CONCLUSION**

This Motion is unopposed. For the foregoing reasons, all four above factors support the imposition of a stay, and this Court should immediately stay this litigation and all case deadlines, including the deadlines associated with the MJOP, pending a decision by the Third Circuit.

Dated: April 21, 2021

Respectfully submitted,

*/s/ Kenneth J. Grunfeld*

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