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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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STEADFAST INSURANCE  
COMPANY, a Delaware corporation;  
and AMERICAN GUARANTEE AND  
LIABILITY INSURANCE COMPANY,  
a New York corporation,

Plaintiffs,

v.

NO. CIV. S-05-0632 FCD JFM

MEMORANDUM AND ORDER

JAMES DOBBAS, an individual;  
PAMELA DOBBAS, an individual;  
DONALD DOBBAS, an individual;  
PETER MANCINI and LISA  
MANCINI, husband and wife; PETER  
MANCINI, as Special Administrator of  
the ESTATE OF CLAUDETTE  
MANCINI, deceased; LISA MANCINI ,  
as the Guardian Ad Litem for NASYA  
MANCINI, a minor; FALLON  
TURNER, an individual; MERRICK  
TURNER, an individual,

Defendants.

\_\_\_\_\_  
AND RELATED COUNTER-CLAIMS  
\_\_\_\_\_

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1 This matter is before the court on a motion to continue discovery and dispositive  
2 motion deadlines, pursuant to Rule 16 of the Federal Rules of Civil Procedure,<sup>1</sup> filed by  
3 plaintiffs and counterdefendants Steadfast Insurance Company (“Steadfast”) and  
4 American Guarantee and Liability Insurance (“American”).<sup>2</sup> Defendants and  
5 countercomplainants, Peter Mancini, Lisa Mancini, Nasya Mancini, Fallon Turner, and  
6 Merrick Turner (collectively, “defendants”) oppose the motion. The court heard oral  
7 argument on this matter on March 2, 2007.

### 8 **BACKGROUND**

9 This suit arises out of a dispute regarding insurance coverage. The facts giving  
10 rise to the insurance claims made by the Turner and Mancini defendants involve a bodily  
11 injury and wrongful death lawsuit, following a collision of the Turner vehicle with an  
12 Angus bull and a subsequent collision of the Turner vehicle with the Mancini vehicle.  
13 The collisions occurred on May 27, 2002. The Angus bull belonged to James Dobbas and  
14 had escaped from the pasture owned by Milton Holstrom. The collisions involved two  
15 fatalities, and four of the vehicles’ occupants were injured.

16 The Turner defendants and Mancini defendants filed complaints against Dobbas,  
17 Holstrom, and others in separate actions. They later consolidated their cases in the United  
18 States District Court for the District of Nevada. The parties reached a settlement  
19 agreement against Dobbas for \$1 million. However, the parties also agreed to binding  
20 arbitration to apportion any award between the Turners and Mancinis. The arbitrator  
21 found that damages were owed in the amount of \$5 million and apportioned the award  
22 between the Turners and the Mancinis. Subsequently, it was discovered that Dobbas had  
23 previously unknown insurance policies with plaintiffs Steadfast and American, and  
24 defendants sought to recover the remaining \$4 million from the policies. Plaintiffs  
25 brought suit, asserting that there is no coverage because they were prejudiced by the late

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26 <sup>1</sup> All further references to the “Rules” are to the Federal Rules of Civil Procedure,  
27 unless otherwise noted.

28 <sup>2</sup> Plaintiffs/Counterdefendants will be designated collectively as “plaintiffs . ”

1 notice of the suit.

2 Plaintiffs Steadfast and American filed an early motion for summary judgment on  
3 the issue of late notice. The court denied summary judgment, finding that although  
4 plaintiffs had identified steps they would have taken in the litigation, they had not  
5 presented sufficient evidence of actual prejudice, i.e. that the result of the prior litigation  
6 or arbitration would have been different had those steps been taken.

7 The parties conducted discovery in this matter, litigating any discovery disputes  
8 relating to this matter in the Nevada District Court. At issue in this motion is discovery  
9 relating to the work done by Dobbas' attorney in the underlying arbitration. Plaintiffs  
10 assert that the discovery and dispositive motion deadlines in this case should be continued  
11 based upon a pending motion to compel in the Nevada District Court. Defendants assert  
12 that the deadlines should not be continued because the evidence at issue is irrelevant to  
13 plaintiffs' burden in demonstrating actual prejudice.

#### 14 ANALYSIS

15 Plaintiffs seek to modify the pretrial scheduling order by extending the discovery  
16 deadline and dispositive motion deadline for sixty (60) days, in light of a pending  
17 discovery motion in the Nevada District Court that relates to this case. A pretrial order  
18 "shall not be modified except upon a showing of good cause." Fed. R. Civ. P. 16(b). The  
19 district court may modify the pretrial schedule "if it cannot reasonably be met despite the  
20 diligence of the party seeking the extension." Johnson v. Mammoth Recreations, Inc.,  
21 975 F.2d 604, 609 (9th Cir. 1992) (quoting Fed. R. Civ. P. 16, advisory committee's notes  
22 (1983 amendment)). The "good cause" standard set forth in Rule 16 primarily focuses  
23 upon the diligence of the party requesting the amendment. "Although the existence or  
24 degree of prejudice to the party opposing the modification might supply additional  
25 reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons for  
26 seeking modification." Id.

27 In their opposition to the motion, defendants do not argue that plaintiffs have not  
28 been diligent in conducting discovery in this matter, but rather, that the sought-after

1 evidence is irrelevant to plaintiffs' burden of proof. Defendants rely on Billington v.  
2 Interinsurance Exchange of Southern California, 71 Cal.2d 728 (1969), to support their  
3 assertion that the conduct of the attorneys in the underlying litigation/arbitration is  
4 irrelevant to plaintiffs' burden in demonstrating actual prejudice. Defendants are  
5 mistaken. In Billington, the California Supreme Court held that an insurer cannot show  
6 actual prejudice solely by presenting evidence that an action was not defended; rather, the  
7 insurer must demonstrate that there was a substantial likelihood that it would have  
8 prevailed if given notice. Id. However, this holding only provides that such evidence is  
9 insufficient by itself, not that such evidence is wholly irrelevant to a showing of actual  
10 prejudice.<sup>3</sup> Evidence of how the underlying case was litigated, including whether and  
11 how the underlying facts were evaluated and developed, while not dispositive, may be  
12 relevant to plaintiffs' position that the underlying result would have been different if they  
13 had been given notice.

14 Therefore, the court finds that the discovery at issue in the Nevada District Court  
15 *may* be relevant to the claims brought by plaintiffs.<sup>4</sup> The court also finds, based upon a  
16 review of the docket in this matter, that plaintiffs have been diligent in conducting  
17 discovery in this case.

18 However, the court finds that granting a continuance in this matter would not be an  
19 efficient means of controlling its docket and calendar. The parties in this case have  
20 continuously filed stipulations and motions to continue deadlines in this case, based upon  
21 disputes arising out of the same or similar discovery. These filing have typically been on  
22 the eve of the discovery deadline and accompanied by an *ex parte* application for an order  
23 shortening time for the court to hear the motion. This manner of litigation is extremely

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24 <sup>3</sup> The cases cited by defendants' counsel at oral argument similarly failed to  
25 support their argument of irrelevance.

26 <sup>4</sup> The court makes no finding herein that the evidence is, in fact, relevant to this  
27 case, or what the weight of any evidence of this type may be. This court has not adjudicated any  
28 of the discovery disputes in this matter, nor is there a dispositive motion filed relating to this  
evidence. The court only finds that such evidence *could* be relevant to plaintiffs' case, such that  
the resolution of the discovery dispute warrants a continuance in some form.

1 inefficient.

2 This court possesses the inherent power to control its own docket and calendar.  
3 Mediterranean Enterprises, Inc. v. Ssangyong Corp., 708 F.2d 1458, 1465 (9th Cir. 1983)  
4 (citations omitted).

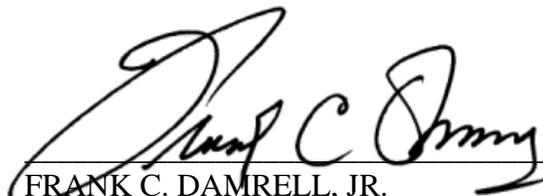
5 A trial court may, with propriety, find it is efficient for its own docket and  
6 the fairest course for the parties to enter a stay of an action before it,  
7 pending resolution of independent proceedings which bear upon the case.  
This rule . . . does not require that the issues in such proceedings are  
necessarily controlling of the action before the court.

8 Id. (quoting Leyva v. Certified Grocers of California, Ltd., 593 F.2d 857, 863-64 (9th Cir.  
9 1979), cert. denied, 444 U.S. 827 (1979)).

10 Based upon the submissions of the parties and a review of the docket, the court  
11 finds that issuing a stay in this matter for three (3) months is the fairest and most efficient  
12 course of action. Accordingly, all proceedings in this action are hereby STAYED for a  
13 period of three months, and all dates presently set are vacated. A status conference is set  
14 for June 8, 2007 at 10:00 a.m., at which time the parties will address whether a further  
15 stay of proceedings is necessary. The parties shall file a joint status conference statement  
16 on or before June 1, 2007, apprising the court of the need, if any, to continue or vacate the  
17 stay. If the discovery dispute in the Nevada District Court has been resolved prior to the  
18 conclusion of the three months, either party may file a motion to lift the stay or both  
19 parties may file a stipulation and proposed order to lift the stay.

20 IT IS SO ORDERED.

21 DATED: March 8, 2007

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25 FRANK C. DAMRELL, JR.  
26 UNITED STATES DISTRICT JUDGE  
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