IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Genesis Insurance Company,

Plaintiff and Counter-Defendant,

v.

Magma Design Automation, Inc.,

Defendant and Counterclaimant,

Magma Design Automation, Inc.,

Third-Party Plaintiff,

v.

National Union Fire Insurance Co. of Pittsburgh, PA, et al.,

Third-Party Defendants,

Executive Risk Indemnity Inc.,

Third-Party Counterclaimant,

v.

Magma Design Automation, Inc.,

Third-Party Counter Defendant.

_____/

NO. C 06-05526 JW

ORDER DENYING GENESIS' MOTION FOR PARTIAL SUMMARY JUDGMENT; GRANTING IN PART AND DENYING IN PART NATIONAL UNION'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff and Counter-Defendant Genesis Insurance Company ("Genesis") brings this diversity action for a declaratory judgment that it is not required to provide excess coverage to its insured, Defendant Magma Design Automation, Inc. ("Magma"), in certain actions brought against Magma. Defendant and Third-Party Plaintiff Magma brings claims for a declaratory judgment that one of the two Executive Risk Indemnity Inc. ("ERII") policies mandates coverage for its claims and that either Genesis or National Union Insurance Co. of Pittsburgh, PA ("National Union") will be at risk to provide excess coverage.

Presently before the Court are the cross-motions for partial summary judgment by Genesis and National Union.[1] The Court conducted a hearing on April 11, 2008. Based on the papers submitted to date and oral arguments of counsel, the Court DENIES Genesis' Motion and GRANTS in part and DENIES in part National Union's Motion.

II. BACKGROUND

A. Procedural History

On September 8, 2006, Genesis filed a Complaint against Magma, seeking declaratory relief with respect to coverage issues arising from the Underlying Litigation against Magma. (Complaint, Docket Item No. 1.) Magma filed a Third-Party Complaint against National Union and ERII, seeking declaratory relief with respect to related coverage issues. (Third-Party Complaint, Docket Item No. 11.)

Genesis is a corporation incorporated under the laws of Connecticut, with its principle place of business in Connecticut. (Complaint ¶ 4.) Magma is a corporation incorporated under the laws of Delaware, with its principal place of business in Santa Clara, California. (Id. ¶ 5.) National Union is an insurance company incorporated under the laws of Pennsylvania, with its principal place of

[1] (Genesis' Motion for Partial Summary Judgment, hereafter, "Genesis Motion," Docket Item No. 85; National Union's Motion for Partial Summary Judgment, hereafter, "National Union Motion," Docket Item No. 87.)

business in New York. (Third-Party Complaint ¶ 7.) ERII is an insurance company incorporated under the laws of Delaware, with its principal place of business in Connecticut. (Id. ¶ 8.)

At the center of the dispute between the parties is whether Genesis or National Union must provide excess coverage after ERII's coverage obligations are exhausted. It is undisputed that Magma has made a claim under one of the ERII policies at issue.[2] However, depending on the policy period in which the Court finds Magma to have made its claim, either Genesis or National Union will be at risk to provide excess coverage.

B. The Insurance Policies

From December 15, 2003 to December 15, 2004, ERII insured Magma under a primary Directors and Officers ("D&O") insurance policy, (the "ERII 03/04 Policy").[3] The ERII 03/04 Policy has a $10 million limit of liability. (Id.)

During the ERII 03/04 Policy Period, Genesis issued a "first-layer excess" D&O insurance policy to Magma (the "Genesis Policy"). (Complaint, Ex. A; Friedman Decl., Ex. D.) As Magma's excess carrier, Genesis provides $5 million in D&O coverage once ERII's primary policy limits are exhausted. (Id.) The Genesis Policy "follows form" to the ERII 03/04 Policy, meaning that the Genesis Policy "shall provide insurance coverage . . . in conformance with and subject to the terms, conditions and exclusions of" the underlying ERII 03/04 Policy. (Id., Ex. D, Section II.) The ERII 03/04 Policy affords coverage to Magma and its officers and directors for "claims-made" and reported during the Policy Period. (Complaint, Ex. B, Insuring Clauses.)

Section 15 of the ERII 03/04 Policy contains the policy's "notice of circumstances" provision. (Id., Ex. B, Reporting and Notice.) Subpart (b) of that section provides as follows:

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[2] (See ERII's Statement of Position with Respect to the Motions for Partial Summary Judgment Filed by Genesis and National Union at 6, Docket Item No. 100.)

[3] (Complaint, Ex. B, Docket Item No. 1; Declaration of Glenn A. Friedman In Support of National Union Fire Insurance Company of Pittsburgh, PA.'s Motion for Summary Judgment ¶ 3, Ex. B, hereafter, "Friedman Decl.," Docket Item No. 88.)

> If during the Policy Period an Insured:
>
> (i) becomes aware of circumstances which could give rise to a Claim and gives written notice of such circumstances to the Company; ....
>
> then any Claim subsequently arising from the circumstances referred to in (i) above . . . shall be deemed to have been first made during the Policy Period in which the written notice described in (i) . . . above was first given by an Insured to the Company, provided any such subsequent Claim is reported to the Company . . . . With respect to any such subsequent Claim, no coverage under this coverage section shall apply to loss incurred prior to the date such subsequent Claim is actually made.

(Id.) Subpart (c) of Section 15 further defines the elements of a proper notice of circumstances. It provides as follows:

> The Insured shall, as a condition precedent to exercising any right to coverage under the coverage section, give the Company such information, assistance, and cooperation as the Company may reasonably require, and shall include in any notice under Subsection 15 . . . (b) a description of the . . . circumstances, . . . the nature of any alleged Wrongful Acts, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which Insured first because aware of the . . . circumstances.

(Id.) The ERII 03/04 Policy provides an additional provision to prevent a single claim from being made in two separate policy periods. The ERII 03/04 Policy provides as follows:

> All Related Claims shall be treated as a single Claim first made on the date the earliest of such Related Claims was first made, or on the date the earliest of such Related Claims is treated as having been made in accordance with Subsection 15(b) below, regardless of whether such date is before or during the Policy Period.

(Id., Ex. B, Limit of Liability, Retention and Coinsurance.)

ERII issued another primary D&O policy to Magma for the Policy Period of December 15, 2004 to March 30, 2006 ("ERII 04/06 Policy"). (Friedman Decl., Ex. C.) Except for the Policy Period, the ERII 04/06 Policy is identical to the ERII 03/04 Policy. (Id., Exs. B, C.) During the ERII 04/06 Policy Period, National Union replaced Genesis as Magma's first-layer excess D&O insurer (the "National Union Policy"). (Id., Ex. E.) The National Union Policy carries a $5 million limit of liability and follows form to the ERII 04/06 Policy. (Id.)

C. The Underlying Litigation

On September 17, 2004, Synopsys Inc. ("Synopsys") sued Magma in the United States District Court for the Northern District of California. (Friedman Decl., Ex. F.) In that action,

Synopsys, Inc. v. Magma Design Automation Inc. (the "Infringement Action"), Synopsys alleged that Magma infringed three patents owned (legally or equitably) by Synopsys. (Id., Ex. F at 3.) Synopsys also alleged:

> After leaving the employment of SYNOPSYS, van Ginneken cofounded MAGMA. Thereafter, MAGMA submitted patent applications to the Patent and Trademark Office that disclosed invention that van Ginneken had made, conceived and development while at SYNOPSYS, and which are owned by SYNOPSYS.

On September 28, 2004, Magma notified its D&O insurers, including ERII and Genesis, of the Infringement Action. (See, e.g., Id., Ex. I.)

On June 13, 2005, Magma shareholders filed a securities class action, In re Magma Design Automation, Inc. Securities Litigation (the "Securities Class Action"). (Complaint, Ex. D.) On July 26, 2005, Magma shareholders also filed a derivative action, Willis v. Madhavan et al. (the "Derivative Action"), in Santa Clara County Superior Court. (Id., Ex. E.) In the securities class action, the plaintiffs alleged:

> [T]hroughout the Class Period defendants failed to disclose that [Magma] faced the serious risk of infringing on intellectual property rights of competitor Synopsys, Inc. because inventions that were critical to Magma's business, and which were patented by Magma, were designed by Magma's Chief Scientist, Lukas van Ginneken, while he was employed by Synopsys.

(Complaint, Ex. D ¶ 3.) Similarly, in the derivative action, the plaintiffs alleged:

> [T]hroughout the Relevant Period Defendants failed to disclose that the Company faces the serious risk of infringing on intellectual property rights of competitor Synopsys, Inc. because certain inventions that were and are critical to Magma's business, and which were patented by Magma, were designed by Magma's Chief Scientist, Lukas van Ginneken, while he was employed by Synopsys.

(Id., Ex. E ¶ 3.) Magma notified ERII of the Securities Class Action and the Derivative Action[4] during the ERII 04/06 Policy Period.

Presently before the Court are the cross-motions for partial summary judgment by Genesis and National Union as to whether a Magma's claim for coverage with respect to the Underlying

[4] The Securities Class Action and the Derivative Action will be referred to, collectively, as the "Underlying Actions."

Actions should be considered to have been made under the ERII 03/04 Policy or the ERII 04/06 Policy.

III. STANDARDS

Although motions for partial summary judgment are common, Rule 56 of the Federal Rules of Civil Procedure, which governs summary judgment, does not contain an explicit procedure entitled "partial summary judgment." As with a motion under Rule 56(c), partial summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The purpose of partial summary judgment "is to isolate and dispose of factually unsupported claims or defenses." Celotex v. Catrett, 477 U.S. 317, 323-24 (1986). The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying the evidence which it believes demonstrates the absence of a genuine issue of material fact." Id. at 323. The non-moving party must then identify specific facts "that might affect the outcome of the suit under the governing law," thus establishing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

When evaluating a motion for partial or full summary judgment, the court views the evidence through the prism of the evidentiary standard of proof that would pertain at trial. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 255 (1986). The court draws all reasonable inferences in favor of the non-moving party, including questions of credibility and of the weight that particular evidence is accorded. See, e.g. Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 520 (1992). The court determines whether the non-moving party's "specific facts," coupled with disputed background or contextual facts, are such that a reasonable jury might return a verdict for the non-moving party. T.W. Elec. Serv., 809 F.2d at 631. In such a case, partial summary judgment is inappropriate. Anderson, 477 U.S. at 248. However, where a rational trier of fact could not find for the non-moving party based on the record as a whole, there is no "genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

The filing of cross-motions for partial summary judgment or summary judgment does not necessarily mean that the material facts are, indeed, undisputed. The denial of one motion does not necessarily require the grant of another. See Atlantic Richfiled Co. v. Farm Credit Bank of Wichita, 226 F.3d 1138, 1147 (10th Cir. 2000). The motions must be evaluated in accordance with the claim or defense which is the subject of the motion and in accordance with the burden of proof allocated to each party.

IV. DISCUSSION

Principally in dispute in the parties' cross-motions for partial summary judgment is whether, under the terms of the policies at issue, Magma's tender of a claim for defense and indemnity regarding the Underlying Actions ("Securities Defense Claim") should be deemed to have been made under the ERII 03/04 Policy or the ERII 04/06 Policy.

All the policies at issue in this case are "claims-made" policies. Generally, "claims-made" insurance policies "limit coverage to claims-made against the insured during the policy period." Homestead Ins. Co. v. Am. Empire Lines Ins. Co., 44 Cal. App. 4th 1297, 1303-04 (1996). However, a "claims-made" policy may provide coverage for claims made after the policy period if the policy contains a "notice of circumstances" provision which allows for coverage after the policy period. Id. at 1305-06. Whether a later-made claim is encompassed within a notice of circumstances depends on the language of the policy. See id.

Interpretation of the language of an insurance policy is a question of law, to be determined exclusively by the court. See Waller v. Truck Ins. Exchange, Inc., 11 Cal. 4th 1, 18 (1995). In interpreting an insurance policy, the court looks at the plain meaning of the language in dispute. Id. The court views the plain meaning according to the mutual intent of the parties, as evidenced from the writing itself. Id. Only when terms are ambiguous, does the court look to extrinsic evidence to aid interpretation, while straining not to find ambiguity where none exists. Id. at 19.

Genesis moves for partial summary judgment that the Securities Defense Claim was not a claim which should be deemed to have been made under the ERII 03/04 Policy. (Genesis Motion at

8.) National Union moves for partial summary judgment that the Securities Defense Claim was not a claim which should be deemed to have been made under the ERII 04/06 Policy. (National Union Motion at 9-13.) In examining the parties' cross-motions for partial summary judgment, the Court considers the following issues: (1) whether Magna tendered a proper notice of circumstances during the ERII 03/04 Policy Period; and (2) whether the Securities Defense Claim is encompassed within that notice of circumstances.

A. Notice of Circumstances

Genesis contends that Magma's Securities Defense Claim is not a claim made within the ERII 03/04 Policy Period because Magma gave an insufficient notice of circumstances during the Policy Period. (Genesis Motion at 9.)

Generally, the coverage of a "claims-made" policy is more limited than an "occurrence policy." However, the insuring agreement is still subject to the same principles of interpretation as other insurance policies. KPFF, Inc. v. California Union Ins. Co., 56 Cal. App. 4th 963, 973 (1997). Like other insurance policy provisions, the coverage clauses of claims-made insurance policies are interpreted broadly, to protect the objectively reasonable expectations of the insured. Montrose Chemical Corp. v. Admiral Ins. Co., 10 Cal. 4th 645, 667 (1995).

The ERII 03/04 Policy requires that a notice of circumstances provides the following information:

> [A] a description of the . . . circumstances, . . . the nature of any alleged Wrongful Acts, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which Insured first become aware of the . . . circumstances.

(Complaint, Ex. B, Reporting and Notice.) The term "Wrongful Acts" is defined as follows:

> [A]ny error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an Insured Person in his or her Insured Capacity.

(Id., Ex. B, Definitions.)

On September 28, 2004, Magma sent both ERII and Genesis a copy of the Infringement Action complaint along with a cover letter stating: "Please accept this letter as a notice of claim

and/or circumstance." (See, e.g., Friedman Decl., Exs. I, O.) In an October 25, 2004 letter, ERII informed Magma that is was denying coverage for the Infringement Action because no insured person was named as a defendant in the complaint. (Id., Exs. K, L.) Despite the denial of coverage, Magma requested that ERII consider the Infringement Action complaint and the accompanying letter as a notice of circumstances which could give rise to a claim under the ERII 03/04 Policy.[5] On November 9, 2004, Magma's broker, Rian Jorgensen, informed an ERII claims representative, Richard Nace, that in the past, Magma has had a patent suit become a D&O liability claim. (Id.) On November 9, 2004, ERII sent a letter to Magma, accepting the Infringement Action as a notice of circumstances, pursuant to Section 15(b) of the ERII 03/04 Policy. (Id. ¶ 7; Friedman Decl., Ex. L.)

Like ERII, Genesis did not reject Magma's notice of circumstances, and it did not advise Magma that the notice of circumstances was insufficient or inadequate. Rather, Genesis acknowledged that Magma intended the Infringement Action complaint and letter to serve as "notice of a claim and/or circumstances" under the Genesis Policy. (Id., Ex. O.) There is no evidence that Genesis requested further information as to the nature and scope of the circumstance during the ERII 03/04 Policy Period. Rather, Genesis informed Magma that "in light of the follow form nature of the coverage provided . . . , it is customary and appropriate for Genesis to withhold issuance of its coverage position . . . until the underlying insurer has communicated its coverage position." (Id.)

Transmission of pleadings can serve as a means of reporting a claim; "if the pleadings contain material relevant both to the reporting of a claim and to circumstances covered by the awareness provision, they can serve the dual purpose of both reporting a claim and giving written notice of circumstances which may subsequently give rise to other claims." KPFF, 56 Cal. App. 4th at 973. California Insurance Code § 553 also provides:

> All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay as ground of objection, are waived.

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[5] (See Declaration of Richard F. Nace in Opposition to Genesis Insurance Company's and National Union Fire Insurance Company of Pittsburgh, PA's Motions for Partial Summary Judgment ¶¶ 6-7, hereafter, "Nace Decl.," Docket Item No. 104.)

Under this statute, an insurer may waive its right to object to the adequacy of notice, if the insured is "lulled by the insurer's silence into believing it had complied with the policy notice . . . provisions." Insua v. Scottsdale Ins. Co., 104 Cal. App. 4th 737, 743 (2002); Elliano v. Assurance Co. of America, 3 Cal. App. 3d 446, 448-49 (1970).

It is undisputed that Magma sent both ERII and Genesis the Infringement Action complaint and accompanying letter, which each party acknowledges was intended to serve as a notice of circumstances. (Friedman Decl., Exs. I, O.) While Magma may not have identified an alleged "Wrongful Act" committed by an insured person, such an identification is not clearly required by the policy language. The policy language refers to the nature of "any alleged Wrongful Acts," which allows for the potential that there may not be "any alleged Wrongful Acts" at the time of the notice. (Complaint, Ex. B, Reporting and Notice.) This comports with the underlying purpose of the notice of circumstances—to give notice of potential future claims related to the circumstances.

Magma also made known to ERII and Genesis that it viewed a D&O claim as the potential for covered damages in two ways: (1) by requesting the companies to accept the Infringement Action as a proper notice of circumstances; and (2) by specifically mentioning to Mr. Nace that a patent infringement claim could give rise to a covered claim. While the evidence does not show that the representation was made directly to a Genesis representative, Genesis informed Magma that "in light of the following form nature of the coverage provided," it would defer issuing a coverage position until ERII communicated its position. (Friedman, Ex. O.) Since Genesis did not subsequently inform Magma that it would not accept tender of the Infringement Action complaint as a notice of circumstances, Genesis has waived the ability to assert that defense now.

Accordingly, the Court finds that Magma gave a proper notice of circumstances within the ERII 03/04 Policy Period.

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B. The Securities Defense Claim

Genesis contends that Magma's Securities Defense Claim is not a claim made within the ERII 03/04 Policy Period because Magma's notice of circumstances did not encompass the Securities Defense Claim. (Genesis Motion at 11.)

The ERII 03/04 Policy identifies later-filed claims that are encompassed within a notice of circumstances as follows:

> If during the Policy Period an Insured . . . becomes aware of circumstances which could give rise to a Claim and gives written notice of such circumstances to the Company; . . . then any Claim subsequently arising from the circumstances . . . shall be deemed to have been first made during the Policy Period in which the written notice . . . was first given by an Insured to the Company.

(Complaint, Ex. B, Reporting and Notice.) Under this provision, a later-filed claim is encompassed by the notice of the circumstances if it "arises from" the circumstances described in the notice. It is appropriate to give a broad definition to the words "arising from" when they appear in policy language. See Continental Cas. Co. v. City of Richmond, 763 F.2d 1076, 1080 (9th Cir. 1985). The Ninth Circuit has specifically noted the "arising from" has "broader significance than 'caused by.'" Id. "Arising from" is commonly understood to mean "'originating from,' 'having its origin in,' 'growing out of,' or 'flowing from' or in short, 'incident to, or having connection with.'" Id.; see Pacific Indemnity Co. v. Truck Insurance Exchange, 270 Cal. App. 2d 700, 704 (1969); Hartford Accident & Indemnity Co. v. Civil Service Employees Insurance Co., 33 Cal. App. 3d 26 (1973). Therefore, the Court interprets the policy to provide that a later-filed claim is determined made during the "Policy Period" if it is "incident to, or has a connection with" the notice of circumstances.

The ERII 03/04 Policy also has a "Related Claims" provision which provides "All Related Claims shall be treated as a single Claim first made on the date the earliest of such Related Claims was first made, or on the date the earliest of such Related Claims is treated as having been made" in accordance with a notice of circumstances. (Friedman Decl., Ex. B, Limit of Liability, Retention and Coinsurance.) The term "Related Claims" is defined as follows:

> "Related Claims" means all Claims for Wrongful Acts based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

(Id., Ex. B, Definitions.) The Court interprets the policy to limit liability to the Policy Period when the first "Related Claim" was tendered or when the notice of circumstances which gave rise to the claim was tendered, whichever is earlier.

Since the Court finds that a proper notice of circumstances was made, the Court proceeds to examine whether the claims regarding the Underlying Actions are related and arise from the circumstances of the Infringement Action. In making this determination, the Court considers the complaint in the Infringement Action, which formed the notice of circumstances, and the complaints in the Underlying Actions, which constitute the potentially covered claim. In the Infringement Action, Synopsys alleged:

> After leaving the employment of SYNOPSYS, van Ginneken cofounded MAGMA. Thereafter, MAGMA submitted patent applications to the Patent and Trademark Office that disclosed invention that van Ginneken had made, conceived and development while at SYNOPSYS, and which are owned by SYNOPSYS.

(Friedman, Ex. F ¶ 8.) On the basis of this allegation, Synopsys alleged that it owned the patents and that Magma infringed them. (Id. ¶¶ 13-17.) In the Securities Class Action, which forms a part of Magma's Securities Defense Claim, the plaintiffs alleged:

> [T]hroughout the Class Period defendants failed to disclose that [Magma] faced the serious risk of infringing on intellectual property rights of competitor Synopsys, Inc. because inventions that were critical to Magma's business, and which were patented by Magma, were designed by Magma's Chief Scientist, Lukas van Ginneken, while he was employed by Synopsys.

(Complaint, Ex. D ¶ 3.) This allegation forms the core "Wrongful Act" of the complaint regarding which actionable misrepresentations were made. Similarly, in the Derivative Action, which also forms a part of Magma's Securities Defense Claim, the plaintiff alleged:

> [T]hroughout the Relevant Period Defendants failed to disclose that the Company faces the serious risk of infringing on intellectual property rights of competitor Synopsys, Inc. because certain inventions that were and are critical to Magma's business, and which were patented by Magma, were designed by Magma's Chief Scientist, Lukas van Ginneken, while he was employed by Synopsys.

(Id., Ex. E ¶ 3.)

The Court finds that the Securities Class Action and the Derivative Action constitute "Related Claims" under the ERII 03/04 Policy because they have almost identical factual underpinnings. Therefore, it is appropriate to treat them as a single Securities Defense Claim made when the notice of circumstances was tendered, provided the notice of circumstances gave rise the claim. Since each of the Underlying Actions concern securities law violations for failing to disclose the risks of patent infringement created by Mr. van Ginneken's employment at Magma, which was the very subject matter of the Infringement Action, the Court finds that the Underlying Actions arise from the Infringement Action.

The complaint in the Infringement Action was tendered as a notice of circumstances on September 28, 2004. (Friedman Decl., Ex. I.) This was several months before the expiration of the ERII 03/04 Policy on December 15, 2004. (Complaint, Ex. B.) Therefore, the Court finds that the Securities Defense Claim is a claim made under the ERII 03/04 Policy. Accordingly, the Genesis Policy is at risk to provide excess coverage for the Securities Defense Claim, and the National Union Policy is not at risk for the Securities Defense Claim. In addition, the Court GRANTS National Union's motion to the extent it is consistent with the Court's analysis above. However, to the extent that National Union otherwise moves the Court for a determination that Magma is not entitled to coverage, National Union's motion is DENIED as not ripe.[6]

V. CONCLUSION

The Court DENIES Genesis' Motion for Partial Summary Judgment and GRANTS in part and DENIES in part National Union's Motion for Partial Summary Judgment.

The parties shall appear for a Further Case Management Conference on **September 22, 2008 at 10 a.m.** On or before **September 12, 2008**, the parties shall file a Joint Case Management Statement. The Statement shall advise the Court on the affect of the findings in this Order and what

[6] A court may not adjudicate the rights and obligations of the parties pursuant to the Declaratory Judgment Act unless there is a "substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Maryland Cas. Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941). A claim is not ripe when requests "an opinion advising what the law would be upon a hypothetical state of facts." MedImmune, Inc. v. Genentech, Inc., 127 S.Ct. 764, 771 (2007); Montrose, 10 Cal. 4th at 659 n.9.

issues remain in this litigation. If the parties believe that this Order disposes of all the actions, the parties shall, on the same day, file and serve their Proposed Judgments.

Dated: July 24, 2008

JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Glenn A. Friedman friedman@lbbslaw.com
Jeremy Scott Simon jsimon@tljlaw.com
John D. Green jgreen@fbm.com
Katina Ancar kancar@fbm.com
Kim Suzanne Orbeck courtir@rdblaw.com
Lewis Kleiman Loss lloss@tljlaw.com
Paul Andre Desrochers desrochers@lbbslaw.com
Robert John Stumpf rstumpf@smrh.com
Terrence Reilly McInnis courtir@rdblaw.com

Dated: July 24, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy