

[831]. Before that ruling, two Defendants filed motions in the related criminal case pending in the Southern District of Texas seeking to compel Underwriters to pay their defense costs. Judge Hittner, presiding over the criminal case, has not yet ruled on those motions. Defendants also filed a civil action in the Southern District against Underwriters for breach of the insurance contracts, among other things. *See* Second Am. Compl., *Holt v. Certain Underwriters at Lloyd's of London*, Civil Action No. 4:09-CV-3712 (S.D. Tex. filed Nov. 17, 2009). The lawsuit seeks to compel Underwriters to pay both criminal and civil defense fees. *Id.* at 14. Underwriters now move this Court for: (1) an injunction requiring Defendants to withdraw the Southern District motions and lawsuit (collectively, the “Southern District actions”), and (2) an order holding Defendants in contempt of this Court’s earlier orders.

I. THE COURT DENIES UNDERWRITERS’ MOTION FOR INJUNCTIVE RELIEF

The Court denies Underwriters’ motion for injunctive relief. Defendants may continue with the Southern District actions to compel Underwriters to fund their criminal defenses. The Court leaves for Judge Hittner to determine whether judicial economy warrants his deciding the duty to defend question regarding the actions pending in this Court.

Judge Hittner is better situated than this Court to determine whether Underwriters are obligated to pay Defendants’ legal fees in connection with the criminal case. First, to the extent the Southern District actions seek criminal defense fees, they relate to an ongoing proceeding in Judge Hittner’s court. Second, the question of whether Underwriters must fund Defendants’ criminal defenses raises factual issues that Judge Hittner is better able to

resolve. For instance, Defendants argue that the Underwriters have unclean hands with regard to criminal defense costs. *See* Defs.' Resp. at 5 [913]. Defendants' counsel argue that they would not have undertaken the criminal representation but for Underwriters' repeated promises to pay, given that Judge Hittner required counsel to agree not to withdraw before a final verdict or guilty plea. *See id.* at 7. Judge Hittner is better positioned than this Court to evaluate these claims. Defendants further argue that the criminal defense fee issue implicates their constitutional right to counsel because Underwriters' assurances of payment foreclosed their ability to retain a public defender. *Id.* at 10. They also say that Judge Hittner's rapid determination of the criminal defense cost issue is essential to their right to a speedy trial. *Id.* at 10-11. In light of these concerns, the Court denies Underwriters motion to the extent it seeks to bar Judge Hittner from determining whether they must fund Defendants' criminal cases.

When Judge Hittner decides whether Underwriters must pay criminal defense costs, he may find that judicial economy warrants his also deciding whether they must fund civil defense costs. For example, he may find that a particular policy exclusion bars payment of all defense costs, civil or criminal. In the alternative, Judge Hittner may find that duty to defend in the criminal proceeding is resolved by issues unique to that action, as discussed above. In that event, this Court defers to Judge Hittner's sound judgment to determine whether judicial economy calls for him also to decide duty to defend in the civil actions pending before this Court. If Judge Hittner declines to determine whether Underwriters must pay civil defense costs, this Court stands ready to decide that question in due course.

II. THE COURT GRANTS UNDERWRITERS' MOTION FOR CONTEMPT

A court may find civil contempt where the moving party shows by clear and convincing evidence: “‘1) that a court order was in effect, 2) that the order required certain conduct by the respondent, and 3) that the respondent failed to comply with the court’s order.” *Am. Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 581 (5th Cir. 2000) (quoting *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir. 1992)).

By seeking relief related to the Policies in another forum, Defendants acted in contempt of this Court’s direct order. This Court “enjoin[ed] Allen Stanford and anyone acting in concert with him, including his attorneys, from taking further steps to seek relief in any court other than this relating to the Policies.” Order of Sept. 28, 2009 at 1-2 [810]. This order is still in effect. Although it was issued in response to Defendant Stanford’s actions in an English court, the Court’s injunctive language was clear and forward-looking. The conduct prohibited is also clear: Stanford and anyone acting in concert with him were not to take *any* further steps seeking relief in *any* other court relating to the policies. Defendants and their attorneys’ conduct violates this prohibition. All Defendants are unquestionably acting “in concert” with Stanford, at least in the Southern District lawsuit,² and their actions “seek relief . . . relating to the Policies” in another court.³

²See Second Am. Compl., *Laura Pendergest-Holt, R. Allen Stanford, Gilbert Lopez, Jr. and Mark Kuhrt v. Certain Underwriters at Lloyd’s of London*, Civil Action No. 4:09-CV-3712 (S.D. Tex. filed Nov. 17, 2009).

³Because the Court finds Defendants in contempt of its September 28, 2009 order, it need not decide whether Defendants also violated the receivership order or its October 9, 2009 order.

Though the Court finds Defendants and their attorneys in contempt of its September 28 order, it declines to impose sanctions. “Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes; to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.” *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-304 (1947). In this case, the Court declines to coerce Defendants into compliance with its order because the Court finds it appropriate for Judge Hittner to decide whether Underwriters must pay defense fees in the criminal proceeding. Had Defendants requested leave to seek defense costs before Judge Hittner, as they surely should have, this Court would have granted leave. It would exalt form over substance to require them to proceed in a less suitable forum because they did not seek leave in the first instance. Also weighing in Defendants’ favor are the facts that (1) they were anything but covert in their actions, and (2) Underwriters did not object to proceeding before Judge Hittner until recently. While the Court certainly does not condone violation of its orders,⁴ it declines to require Defendants to adjudicate duty to defend the criminal proceeding in this Court rather than Judge Hittner’s.

III. FURTHER ACTIONS SEEKING D&O PROCEEDS

The Court now clarifies that it is exercising exclusive jurisdiction over the Policies and their proceeds for anything other what it has explicitly permitted Defendants here. The Court’s receivership order enjoins Defendants from “interfer[ing] in any manner with the

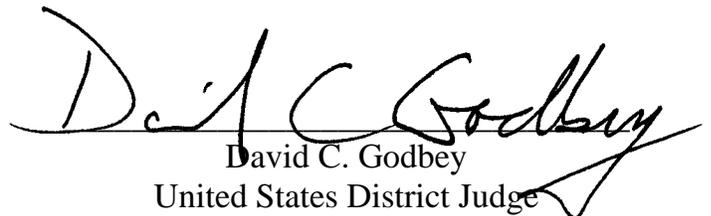
⁴If this were a punitive criminal contempt proceeding, rather than a coercive civil contempt proceeding, the Court would likely sanction Defendants.

exclusive jurisdiction of this Court over the Receivership Estate, including the filing or prosecuting any actions . . . which affect the Receivership assets . . . except with the permission of this Court.” Order Appointing Receiver at 8 [10] . In its most recent order regarding the Policies, the Court “assume[d], without deciding, that the proceeds are part of the receivership estate.” Order of October 9, 2009 at 4 [831]. Although the Court deferred judgment as to the proceeds’ status, the Court clarifies that it does claim exclusive jurisdiction over the proceeds with regard to any claims other than those at issue in the Southern District actions. No persons or entities may bring further claims related to the Policies’ proceeds in any forum other than this Court. To do so would be in contempt of the receivership order and the Court’s October 9, 2009 order.

CONCLUSION

For reasons discussed above, the Court denies Undewriters’ emergency motion.

Signed December 16, 2009.


David C. Godbey
United States District Judge