

**FILED**

NOV 20 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA; UNITED  
STATES FIDELITY & GUARANTY  
COMPANY,

Plaintiffs - Appellees,

v.

KB HOME COASTAL, INC., a California  
Corporation; KB HOME SACRAMENTO,  
INC., a California Corporation; KB  
HOME SOUTH BAY, INC., a California  
Corporation; KB HOME GREATER LOS  
ANGELES, INC., a California  
Corporation,

Defendants - Appellants.

No. 12-56289

D.C. No. 2:12-cv-02473-DSF-JC

ORDER\*

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Argued and Submitted October 8, 2014  
Pasadena, California

Before: TALLMAN, BEA, and OWENS, Circuit Judges.

---

\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Defendants-Appellants' motion to voluntarily dismiss the above-captioned appeal is GRANTED. Costs are awarded to the Plaintiffs-Appellees.

IT IS SO ORDERED.

FILED

NOV 20 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

Travelers Property Casualty Company v. KB Home Coastal, Inc., No. 12-56289

TALLMAN, Circuit Judge, dissenting from the order granting dismissal.

For the reasons stated in Plaintiffs-Appellees' opposition to the motion to dismiss, I respectfully dissent from the order granting the opposed dismissal. As the parties are engaged in numerous ongoing district court proceedings and, given the nature of the parties' businesses, will likely face again the issues raised on appeal, the panel should provide a ruling that gives direction to the district courts. In addition, as this appeal has been pending for over two years, Defendants-Appellants' motion has been made at the eleventh hour for no other reason than a fear of losing its appeal after having heard the tenor of panel questioning at oral argument. Granting dismissal at this late stage further encourages improper gamesmanship by parties. That Defendants-Appellants would rather withdraw the appeal than face a potential loss reinforces the conclusion that this issue is likely to reappear. One can only conclude that Defendants-Appellants are motivated purely by a fear that the Ninth Circuit will issue controlling authority that will negatively impact future litigation.