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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CANAL INSURANCE COMPANY,

1:09-cv-02104-OWW-SKO

Plaintiff,

MEMORANDUM DECISION ON
DEFENDANTS' MOTION TO DISMISS

v.

DARA TRANSPORT, INC., et al.,

Defendants.

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I. INTRODUCTION.

Canal Insurance Company ("Plaintiff") is proceeding with an action for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 against Dara Transport, Inc. ("Dara Transport"), Chandararoth Pok ("Chandararoth"), Sila Sok, and Darryl R. Pok ("Moving Defendants").

Plaintiff filed its complaint on December 2, 2009. (Doc. 1). Plaintiff filed requests for entry of default judgements against Dara Transport and Chandararoth on March 9, 2010. (Docs. 9, 10). On March 12, 2010, the Clerk of the Court entered default judgments against Dara Transport and Chandararoth. (Docs. 13, 14).

Defendants filed a motion to dismiss the complaint or, in the alternative, to stay Plaintiff's action pending resolution of a related case being litigated in state court. (Doc. 15). Plaintiff

1 filed opposition to the motion to dismiss on May 13, 2010. (Doc.
2 19). Defendants filed a reply on May 29, 2010. (Doc. 20).

3 **II. FACTUAL BACKGROUND.**

4 On March 28, 2007, Noch Pok ("Decedent") died while operating
5 a 1999 Freightliner tractor and 1994 Great Dane trailer ("subject
6 vehicle"). (Complaint at 2). Decedent lost control of the subject
7 vehicle while traveling on Interstate Highway 395 in Bishop,
8 California. (Complaint at 2). Decedent's spouse and son are the
9 Moving Defendants in the instant action. (Complaint at 2).

10 Moving Defendants filed a state court action against Dara
11 Transport and Chandararoth for wrongful death on March 25, 2009 in
12 the California Superior Court for the County of Los Angeles.
13 (Complaint at 5). Dara Transport is an interstate commercial
14 trucking company based in the State of Rhode Island, and
15 Chandararoth is an individual and an officer of Dara Transport.
16 (Complaint at 2). Moving Defendants' complaint in the state court
17 action alleges that Chandararoth owned, serviced, repaired, and was
18 otherwise responsible for the maintenance and operation of the
19 subject vehicle that allegedly caused Decedent's death.
20 (Complaint, Ex. B at 3). The state court complaint also alleges
21 that Dara and Chandararoth were legally responsible for the
22 operation and loading of the subject vehicle. (Complaint, Ex. B at
23 4). Moving Defendant's state court complaint alleges that Dara
24 Transport and Chandararoth were negligent in the maintenance and
25 service of the subject vehicle, and that as a result of Dara and
26 Chandararoth's negligence, the subject vehicle was incapable of
27 operating properly and proximately caused decedent's death.
28 (Complaint, Ex. B at 4).

1 Plaintiff Canal Insurance Company is Dara Transport's insurer.
2 (Complaint at 5). Dara Transport and Chandararoth tendered defense
3 of the Moving Defendants' state court action to Plaintiff pursuant
4 to the terms of their insurance agreement, and Plaintiff commenced
5 defense of the action. (Complaint at 7). Plaintiff continues to
6 defend the ongoing litigation in state court under a reservation of
7 rights. (Complaint at 2, 7).

8 On December 2, 2009, Plaintiff filed this case seeking a
9 declaratory judgment that the insurance policy between Plaintiff
10 and Dara Transport does not cover the underlying claim.
11 Plaintiff's complaint alleges that the Moving Defendants' state
12 court action is not covered by the insurance policy because, *inter*
13 *alia*,:

- 14 1) Dara Transport did not in fact own the subject vehicle;
- 15 2) Decedent was not operating the subject vehicle with the
16 permission of Dara Transport at the time of Decedent's death,
17 or was operating the vehicle beyond the scope of Dara
18 Transport's permission;
- 19 3) Decedent was operating the vehicle pursuant to a long term
20 leased owner-operator agreement or other agreement subject to
21 an exclusion under the insurance policy; and
- 22 4) Dara Transport's liability is predicated on an obligation
23 for which Dara Transport or an unknown insurer may be held
24 liable under a workmen's compensation, unemployment
25 compensation, disability benefits law, or similar law by
26 reason of common law or statutory employment.

27 (Complaint at 9-10).

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1 **III. LEGAL STANDARD.**

2 Dismissal under Rule 12(b)(6) is appropriate where the
3 complaint lacks sufficient facts to support a cognizable legal
4 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
5 (9th Cir.1990).¹ To sufficiently state a claim to relief and
6 survive a 12(b)(6) motion, the pleading "does not need detailed
7 factual allegations" but the "[f]actual allegations must be enough
8 to raise a right to relief above the speculative level." *Bell Atl.*
9 *Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d
10 929 (2007). Mere "labels and conclusions" or a "formulaic
11 recitation of the elements of a cause of action will not do." *Id.*
12 Rather, there must be "enough facts to state a claim to relief that
13 is plausible on its face." *Id.* at 570. In other words, the
14 "complaint must contain sufficient factual matter, accepted as
15 true, to state a claim to relief that is plausible on its face."
16 *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173
17 L.Ed.2d 868 (2009) (internal quotation marks omitted).

18 The Ninth Circuit has summarized the governing standard, in
19 light of *Twombly* and *Iqbal*, as follows: "In sum, for a complaint to
20 survive a motion to dismiss, the nonconclusory factual content, and
21 reasonable inferences from that content, must be plausibly
22 suggestive of a claim entitling the plaintiff to relief." *Moss v.*
23 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.2009) (internal
24 quotation marks omitted). Apart from factual insufficiency, a
25 complaint is also subject to dismissal under Rule 12(b)(6) where it
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27 ¹ Defendants ask the court to dismiss, or in the alternative, to stay Plaintiff's
28 action. Because Plaintiff's complaint must be dismissed, the court does not
address the propriety of issuing a stay.

1 lacks a cognizable legal theory, *Balistreri*, 901 F.2d at 699, or
2 where the allegations on their face “show that relief is barred”
3 for some legal reason, *Jones v. Bock*, 549 U.S. 199, 215, 127 S.Ct.
4 910, 166 L.Ed.2d 798 (2007).

5 In deciding whether to grant a motion to dismiss, the court
6 must accept as true all “well-pleaded factual allegations” in the
7 pleading under attack. *Iqbal*, 129 S.Ct. at 1950. A court is not,
8 however, “required to accept as true allegations that are merely
9 conclusory, unwarranted deductions of fact, or unreasonable
10 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
11 (9th Cir.2001). “When ruling on a Rule 12(b)(6) motion to dismiss,
12 if a district court considers evidence outside the pleadings, it
13 must normally convert the 12(b)(6) motion into a Rule 56 motion for
14 summary judgment, and it must give the nonmoving party an
15 opportunity to respond.” *United States v. Ritchie*, 342 F.3d 903,
16 907 (9th Cir.2003). “A court may, however, consider certain
17 materials—documents attached to the complaint, documents
18 incorporated by reference in the complaint, or matters of judicial
19 notice—without converting the motion to dismiss into a motion for
20 summary judgment.” *Id.* at 908.

21 **IV. DISCUSSION.**

22 **A. Declaratory Judgment Standard**

23 Plaintiff asserts it is entitled to a declaratory judgment
24 pursuant to 28 U.S.C. §§ 2201 and 2202. Section 2201(a) provides:

25 In a case of actual controversy within its jurisdiction
26 ..., any court of the United States, upon the filing of an
27 appropriate pleading, may declare the rights and other
28 legal relations of any interested party seeking such
declaration, whether or not further relief is or could be
sought. Any such declaration shall have the force and
effect of a final judgment or decree and shall be

1 reviewable as such.

2 28 U.S.C. § 2201 (2009). Section 2202 provides "[f]urther necessary
3 or proper relief based on a declaratory judgment or decree may be
4 granted, after reasonable notice and hearing, against any adverse
5 party whose rights have been determined by such judgment." 28
6 U.S.C. § 2202 (2009).

7 The phrase "case of actual controversy" in section 2201 refers
8 to the type of "Cases" and "Controversies" that are justiciable
9 under Article III of the United States Constitution. *MedImmune,*
10 *Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (citation
11 omitted). In determining whether a case or controversy exists for
12 the purposes of an action pursuant to section 2201, a court must
13 determine "whether the facts alleged, under all the circumstances,
14 show that there is a substantial controversy, between parties
15 having adverse legal interests, of sufficient immediacy and reality
16 to warrant the issuance of a declaratory judgment. *Id.* (citing
17 *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273
18 (1941)). Section 2201 requires that a dispute be

19 "definite and concrete, touching the legal relations of
20 parties having adverse legal interests"...and "admit of
21 specific relief through a decree of a conclusive
22 character, as distinguished from an opinion advising what
23 the law would be upon a hypothetical state of facts."

24 *Id.* (citations omitted).

25 Once a court determines that a complaint presents a case or
26 controversy within the court's jurisdiction, the court must decide
27 whether to exercise that jurisdiction based on the factors set
28 forth in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942). *E.g.*
Kearns, 15 F.3d at 144. "Essentially, the district court 'must

1 balance concerns of judicial administration, comity, and fairness
2 to the litigants.'" *Id.* (citation omitted).

3 **B. Plaintiff's Complaint**

4 The complaint fails to allege facts sufficient to permit the
5 court to determine whether there is a substantial controversy
6 between the parties. Although an actual controversy may exist
7 between a party suing an insured defendant and the insurer where
8 the insurer denies liability, *see, e.g., American States Ins. Co.*
9 *v. Kearns*, 15 F.3d 142, 144 (9th cir. 1994), Plaintiff's complaint
10 does not allege facts which establish the existence of a "real and
11 substantial" dispute as required by section 2201, *MedImmune*, 549
12 U.S. at 127. The complaint simply posits a series of hypothetical
13 situations in which Plaintiff might not be liable under the
14 insurance policy. Section 2201 actions based solely on
15 hypothetical facts need not be entertained by federal courts.
16 *MedImmune*, 549 U.S. at 127.

17 As Moving Defendants point out, the complaint advances
18 contradictory theories unsupported by any allegations of fact. For
19 example, the complaint alleges:

20 On or about March 28, 2007, the decedent was operating
21 Dara Transport's 1999 Freightliner tractor and 1994 Great
22 Dane trailer...while hauling cargo for Dara Transport
23 under its authority and in the course and scope of his
24 employment as a common law or statutory employee of Dara
25 Transport. While in the course of doing so, the decedent
26 lost control of such vehicle on a downhill
27 grade...resulting in the death of the decedent.

28 (Complaint at 5-6). Later in the complaint, Plaintiff alleges:

The Canal policy does not afford any coverage whatsoever
with respect to [Moving Defendant's state court action],
as Dara Transport did not in fact own the 1999
Freightliner tractor and/or 1994 Great Dane trailer being
operated by the decedent at the time of his death, and/or
said vehicles were not being operated by the decedent

1 with the permission of Dara Transport and/or were not
2 being operated by the decedent within the scope of such
permission at the time of his death.”

3 (Complaint at 9). Plaintiff’s alternative hypothetical scenarios
4 allege Dara Transport did not own the accident vehicle; further,
5 that decedent was driving without the permission of Dara Transport,
6 an owner; and that decedent exceed the scope of any permission.
7 From the allegations of the complaint it cannot be ascertained
8 whether decedent was a common law or statutory employee of Dara
9 Transport; whether the subject vehicle was owned by a party other
10 than Dara Transport; or whether Decedent was operating the subject
11 vehicle without the permission of Dara Transport. Whether a real
12 controversy exists cannot be determined based on these conclusory,
13 contradictory allegations.

14 Plaintiff contends that Defendant is not entitled to
15 dismissal under Rule 12(b)(6) because Defendant’s motion is
16 actually an improperly identified motion to dismiss for lack of
17 subject matter jurisdiction-on ripeness grounds- pursuant to Rule
18 12(b)(1). (Opposition at 4). Plaintiff contends that “Defendants
19 have made no showing whatsoever in support of their contention that
20 Plaintiff’s complaint fails to state a cause of action.”
21 (Opposition at 4). Although Defendants’ motion to dismiss consists
22 primarily of arguments concerning the prematurity of Plaintiff’s
23 action, Defendants do assert that “Pursuant to Federal Rule of
24 Civil Procedure 12(b)(6), the complaint and each claim for relief
25 set forth therein fail to state a claim upon which relief can be
26 granted.” (Motion to Dismiss at 2). Defendants’ motion to dismiss
27 also argues that:

28 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a

1 court may dismiss a complaint "as a matter of law for one
2 of two reasons: (1) lack of a cognizable legal theory, or
3 (2) insufficient facts under a cognizable claim." See
4 *Robertson v. Dean Witter*, 749 F.2d 530, 533-34 (9th Cir.
5 1984). Plaintiff must provide more than a formulaic
6 recitation of the elements of a cause of action" and its
7 "factual allegations must be enough to raise a right to
8 relief above the speculative level." See *Bell Atl. Corp.*
9 *v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007).

10 (Motion to Dismiss at 5). Defendants' motion to dismiss does not
11 contain detailed analysis of the complaint's deficiencies, however,
12 given the conclusory nature of the complaint, detailed analysis is
13 not required. The insufficiency of Plaintiff's complaint is
14 apparent. The complaint must be DISMISSED, without prejudice.

15 **ORDER**

16 For the reasons stated, IT IS ORDERED:

- 17 1) The complaint is DISMISSED, without prejudice;
18 2) Defendants shall lodge a formal order consistent with this
19 decision within five (5) days following electronic service
20 of this decision by the clerk. Plaintiff shall file an
21 amended complaint within fifteen (15) days of the filing of
22 the order. Defendant shall file a response within fifteen
23 (15) days of receipt of the amended complaint.

24 IT IS SO ORDERED.

25 Dated: July 1, 2010

26 /s/ Oliver W. Wanger
27 UNITED STATES DISTRICT JUDGE
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