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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**ARCH CHEMICALS, INC.**,  
a Virginia corporation, and  
**LEXINGTON INSURANCE CO.**,

Plaintiffs

v.

**RADIATOR SPECIALTY COMPANY**,  
a North Carolina corporation,

Defendant.

No. 07-1339-HU

OPINION AND ORDER

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8 HUBEL, Magistrate Judge:

9  
10 This is an action by Arch Chemicals, Inc. (Arch) and Lexington  
Insurance Company (Lexington) against Radiator Specialty Company  
11 (RSC), asserting claims for contribution and Lexington brings a  
12 second claim for unjust enrichment. Arch and Lexington seek  
13 recovery of amounts paid in settlement of a lawsuit against Arch  
14 brought by members of the Davidson family. Before the court is  
15 RSC's Motion to Strike Lexington's Complaint (doc. # 357). For  
16 the reasons set forth below, I deny the motion.

17  
18 **FACTS**

19 This case arises out of the wrongful death and bodily injury  
20 claims brought by the Davidson family against Arch Chemicals. The  
21 facts are summarized in multiple earlier opinions from the court  
and will not be repeated here.

22 On April 20, 2004, the Davidson family brought a lawsuit  
23 against Arch in Oregon state court alleging civil claims related to  
24 the fire. The litigation was resolved by a confidential settlement  
25 on December 7, 2006, which was jointly funded by Arch and  
26 Lexington.

27 On September 7, 2007, Arch brought the instant lawsuit against  
28

1 RSC, seeking contribution for RSC's role in causing the fire. On  
2 June 30, 2009, on RSC's motion, Arch's insurer, Lexington, was  
3 joined as a real party in interest. While that order was  
4 reconsidered at the request of Arch, it was reaffirmed on September  
5 25, 2009.

6 There was nothing filed by Lexington in this regard until  
7 nearly a year later. On September 14, 2010, after RSC had filed  
8 its motion for summary judgment, Lexington for the first time filed  
9 its own complaint against RSC. Lexington's First Claim for Relief  
10 was for contribution mirroring Arch's similar claim. Lexington's  
11 second claim for relief was for unjust enrichment/restitution.  
12 Arch has made no effort to assert a similar claim. RSC now moves  
13 to strike Lexington's entire complaint or its claim for unjust  
14 enrichment. (doc. #357)

#### 15 STANDARD

16 Rule 12(f) of the Federal Rules of Civil Procedure states that  
17 a district court "may strike from a pleading an insufficient  
18 defense or any redundant, immaterial, impertinent, or scandalous  
19 matter." "The function of a 12(f) motion to strike is to avoid the  
20 expenditure of time and money that must arise from litigating  
21 spurious issues by dispensing with those issues prior to trial[.]"  
22 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)  
23 (quotation marks, citation, and first alteration omitted), rev'd on  
24 other grounds by Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994).  
25 Granting a motion to strike is within the broad discretion of the  
26 district court. Stanbury Law Firm v. IRS, 221 F.3d 1059, 1063 (9th  
27 Cir. 2000). However, "Rule 12(f) does not authorize district  
28 courts to strike claims for damages on the ground that such claims

1 are precluded as a matter of law." Whittlestone, Inc. v.  
2 Handi-Craft Co., 618 F.3d 970, 974-75 (9th Cir. 2010).

3 **DISCUSSION**

4 Motion to Strike

5 RSC advances two arguments for why the court should strike  
6 Lexington's Complaint and its second claim for unjust enrichment.  
7 First, it argues that Lexington's Complaint has no legal effect  
8 because there can only be one operative complaint at a time in any  
9 one case. RSC, however, cites no legal authority for this  
10 assertion, nor has this court found any authority so holding.

11 Second, RSC argues that Lexington is really trying to amend  
12 its complaint to add a new claim in violation of Fed. R. Civ. P.  
13 15(a)(2), and that even if the court were to allow amendment, it  
14 would be futile. This argument, however, is not well taken since  
15 Lexington cannot amend a complaint that it never filed in the first  
16 place.

17 The substance of RSC's motion to strike focuses on elimination  
18 of the unjust enrichment claim for damages on the basis that the  
19 claim fails as a matter of law. The Ninth Circuit, however, has  
20 recently held that "a party may [not] seek dismissal of a pleading  
21 under Rule 12(f)," and that the rule "does not authorize district  
22 courts to strike claims for damages on the grounds that such claims  
23 are precluded as a matter of law." Whittlestone, 618 F.3d at 974-  
24 75.

25 Defendant argues orally it is unfair to allow a new claim  
26 after discovery closes. It argues it wants discovery about the  
27 alleged benefit conferred, but identifies no discovery in this  
28 regard not already in its grasp, nor any facts in dispute.

1 Last, defendant argues it is unfair to allow this complaint as  
2 a way to avoid defendant's summary judgment motion. That motion (#  
3 317) is, however, denied on other grounds.

4 RSC's motion to strike, therefore, is an inappropriate vehicle  
5 to challenge Lexington's claim for unjust enrichment on the grounds  
6 asserted. Accordingly, RSC's motion is denied.

7 **CONCLUSION**

8 Defendant's Motion to Strike Lexington's Complaint [doc. #  
9 357] is denied.

10 IT IS SO ORDERED,

11  
12 Dated this 10th day of December, 2010.

13 /s/ Dennis J. Hubel

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15 Dennis James Hubel  
16 United States Magistrate Judge  
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