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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GENERAL STAR NATIONAL
INSURANCE COMPANY,

Plaintiff,

v.

ASSET REALTY LLC dba CENTURY 21
NORTHWEST, CHARD BARRON
STOREY,

Defendants.

CASE NO. 2:22-CV-1168-DWC

ORDER ON MOTION TO INTERVENE

Currently pending before the Court is Century 21 Real Estate LLC’s Motion to Intervene as Defendant and Counterclaim-Plaintiff. Dkt. 49.¹ After considering the relevant record, the Motion to Intervene (Dkt. 49) is granted.

I. Background

Plaintiff General Star National Insurance Company (“General Star”) initiated this action for declaratory relief on August 22, 2022. Dkt. 1. General Star issued an insurance policy to Defendant Asset Realty LLC d/b/a Century 21 Northwest (“Asset Realty”). Dkt. 1. Defendants

¹ Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the currently named parties have consented to have this matter heard by the undersigned Magistrate Judge.

1 Asset Realty and Chad Barron Storey were named as defendants in a lawsuit filed in the Pierce
2 County Superior Court – a Washington State court (“underlying lawsuit”). *See id.* General Star is
3 currently defending Defendants in the underlying action and has filed this lawsuit seeking a
4 determination that it has no duty to defend and indemnify Defendants in the underlying action
5 under the terms of the insurance policy. *Id.*

6 On September 25, 2023, the plaintiffs in the underlying action filed a first amended
7 complaint adding Century 21 Real Estate LLC (“Century 21”) as a defendant. Dkt. 51 at 5-33.
8 Century 21 has a franchise agreement with Asset Realty. Under the franchise agreement, Asset
9 Realty is required to name Century 21 as an additional insured on all insurance policies listed
10 and maintained by Asset Realty. Dkt. 49; *see also* Dkt. 52 at 30. Century 21 tendered the defense
11 to General Star and, on October 6, 2023, General Star agreed to defend Century 21 under a full
12 reservation of rights. *See* Dkt. 63-1.

13 On October 2, 2023, Century 21 filed the Motion to Intervene seeking to intervene as a
14 defendant and counterclaim-plaintiff in this action. Dkt. 49. The Motion to Intervene has been
15 fully briefed. *See* Dkts. 49, 62, 64.²

16 **II. Legal Standard**

17 Under Federal Rule of Civil Procedure 24(a)(2), “[o]n timely motion, the court must
18 permit anyone to intervene who . . . claims an interest relating to the property or transaction that
19 is the subject of the action, and is so situated that disposing of the action may as a practical
20 matter impair or impede the movant’s ability to protect its interest, unless existing parties
21 adequately represent that interest.” Thus, an applicant is entitled to intervention as of right upon
22

23 ² The Court notes that, on August 11, 2023, General Star filed a Motion for Summary Judgment. Dkt. 35.
24 Defendants Asset Realty and Storey filed a Cross-Motion for Summary Judgment and Response on September 5,
2023. Dkt. 39.

1 a four-part showing: (1) the application for intervention must be timely; (2) the applicant must
2 have a “significantly protectable” interest relating to the property or transaction that is the subject
3 of the action; (3) the applicant must be so situated that the disposition of the action may, as a
4 practical matter, impair or impede the applicant’s ability to protect that interest; and (4) the
5 applicant’s interest must not be adequately represented by the existing parties in the lawsuit.
6 *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001). “In general,
7 courts construe Rule 24(a) liberally in favor of potential intervenors.” *Ctr. for Biological*
8 *Diversity v. United States Env’t Prot. Agency*, 2009 WL 10727789, at *2 (W.D. Wash. Oct. 5,
9 2009) (citing *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir.
10 1995)).

11 **III. Discussion**

12 Century 21 moves to intervene as a matter of right under Rule 24(a)(2). Dkt. 49. Asset
13 Realty and Storey do not object to Century 21 intervening in this matter. Dkt. 50, Kiel Dec., ¶¶
14 2-3. General Star opposes the Motion and argues only that Century 21 interests are adequately
15 represented by Asset Realty and Storey (factor 4) and, therefore, intervention is not proper. Dkt.
16 62. As such, the Court finds General Star concedes Century 21 has shown factors 1-3 of the four-
17 part test warrant intervention. Therefore, the only issue before the Court is whether Century 21
18 has shown factor 4 – whether Century 21’s interests are adequately represented by the existing
19 parties in the lawsuit – has been met.

20 To evaluate the adequacy-of-representation element, courts in this circuit consider three
21 factors: “(1) whether the interest of a present party is such that it will undoubtedly make all of a
22 proposed intervenor’s arguments; (2) whether the present party is capable and willing to make
23 such arguments; and (3) whether a proposed intervenor would offer any necessary elements to
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1 the proceeding that other parties would neglect.” *Citizens for Balanced Use v. Mont. Wilderness*
2 *Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th
3 Cir. 2003)). “The burden of showing inadequacy is ‘minimal,’ and the applicant need only show
4 that representation of its interests by existing parties ‘may be’ inadequate.” *See Berg*, 268 F.3d at
5 823 (9th Cir. 2001) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

6 Here, the Court has considered the three factors of the adequacy-of-representation
7 element and finds Century 21 has shown its interests may not be adequately represented by Asset
8 Realty or Storey. Century 21 may attempt to assert arguments in this case that have not been
9 raised, nor are capable of being raised, by Asset Realty and Storey. For example, Century 21
10 asserts it was not an active participant in the conduct alleged in the underlying action and, thus,
11 the exclusionary policy language General Star relies on to deny coverage would not exclude
12 coverage for Century 21. *See* Dkts. 49, 64. Arguments, such as this, were not raised in the
13 motions for summary judgment, which have been fully briefed. *See* Dkts. 35, 39. Moreover,
14 Century 21 asserts both Asset Realty and Century 21 have an interest in securing the \$1 million
15 policy limits of the General Star policy. *See* Dkts. 49, 64. And, Asset Realty must indemnify
16 Century 21 in connection with the underlying action. *See* Dkts. 49, 64. Thus, the parties’ interests
17 are potentially in conflict.

18 Based on the record before the Court, Asset Realty and Storey will not make all of
19 Century 21’s arguments, Asset Realty and Storey may not be capable and willing to make
20 arguments that are favorable to Century 21, and Century 21 may be able to provide arguments
21 that Asset Realty and Storey cannot advance. Considering the factors, Century 21 has shown its
22 interest are not adequately represented by the existing parties in the lawsuit.

1 As General Star conceded the first three factors favor intervention and as Century 21 has
2 shown the fourth factor weighs in favor of intervention, the Court finds Century 21 has shown it
3 is entitled to intervention as a matter of right under Rule 24(a).

4 **IV. Indispensable Party**

5 Now that the Court has concluded Century 21 is entitled to intervene as a matter of right,
6 the Court must determine whether it has subject matter jurisdiction over the parties. *See Allstate*
7 *Ins. Co. v. Hughes*, 358 F.3d 1089, 1093 (9th Cir. 2004) (holding that “[t]he court has a
8 continuing obligation to assess its own subject-matter jurisdiction, even if the issue is neglected
9 by the parties”). However, before the Court can determine if jurisdiction has been divested by
10 Century 21’s intervention, Century 21 must have an opportunity to decline consent to a U.S.
11 Magistrate Judge presiding over this case. *See* 28 U.S.C. § 636(c). Therefore, the Court will not
12 address issues related to subject matter jurisdiction until Century 21 has been provided with a
13 notice of assignment to a U.S. Magistrate Judge and a declination of consent form.

14 **V. Conclusion**

15 For the above stated reasons, Century 21’s Motion to Intervene (Dkt. 49) is granted and
16 Century 21 shall be added as an intervening defendant and counterclaim-plaintiff. The Court
17 declines to decide any additional matters, including the pending motions and whether Century 21
18 is an indispensable party, until after Century 21 has been provided with the notice of assignment
19 to a U.S. Magistrate Judge and declination of consent form.

20 The Court directs the Clerk to send the Notice of Assignment to U.S. Magistrate Judge
21 and Declination of Consent form to Century 21. The deadline to return the declination of consent
22 shall be November 27, 2023.

1 The Court also directs the Clerk to ensure the docket correctly reflects that Century 21 is
2 an intervening defendant and counterclaim-plaintiff in this matter and re-note all pending
3 motions (Dkts. 35, 39, 53) to December 1, 2023 to allow adequate time for Century 21 to
4 consider the declination of consent form. The Court will not accept additional briefing on any
5 pending motion until a determination has been made regarding whether the Court has subject
6 matter jurisdiction over the parties.

7 Dated this 17th day of November, 2023.

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10 David W. Christel
11 Chief United States Magistrate Judge
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