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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DERRICK HOWARD,) Case No. CV 12-01068 DDP (JCx)
12)
12 Plaintiff,) **ORDER DENYING MOTION FOR**
13) **APPOINTMENT OF COUNSEL**
13 v.) [Dkt. No. 103]
14)
14 FARMERS INSURANCE COMPANY,)
15 INC.; MID-CENTURY INSURANCE)
15 COMPANY; et al.)
16)
16 Defendants.)
17)
17 _____)
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19 Presently before the Court is Plaintiff's Motion for
20 Appointment of Counsel. (Dkt. No. 103.) Plaintiff is an inmate at
21 United States Penitentiary Coleman II in Florida; the claims of his
22 complaint arise from an insurance contract relating to a rental
23 property in Missouri that Plaintiff owns or owned. (Dkt. No. 3.)
24 In other words, it is a private civil dispute, not a criminal
25 matter, a civil rights claim, or even a civil dispute with the
26 Bureau of Prisons.

27 Plaintiff nonetheless asks that the Court request an attorney
28 to represent him under 28 U.S.C. § 1915(e)(1). That section allows

1 the court "to request volunteer counsel for indigent plaintiffs,"
2 although "the court has no power to make a mandatory appointment."
3 Zachow v. City of Portland, Or., No. 3:14-CV-00140-JE, 2014 WL
4 1236371, at *3 (D. Or. Mar. 25, 2014). Plaintiff argues that
5 appointment of volunteer counsel "would assist the court as well as
6 all parties involved," because, as an inmate, he is unable to
7 conduct discovery, depose witnesses, or timely respond to
8 pleadings, discovery, or court orders. (Motion at 3.)

9 Plaintiff is correct that his status as an inmate hinders the
10 timely and orderly resolution of this litigation. (See, e.g., Dkt.
11 No. 90 (order modifying scheduling order because discovery is
12 delayed by being sent back and forth through the prison mail
13 system).) The parties' frustration with this fact is
14 understandable. However, there are several good reasons not to
15 request counsel under § 1915(e)(1).

16 First, request of counsel in private, commercial lawsuits is
17 vanishingly rare. After diligent search, the Court has found only
18 one case in which a private plaintiff was appointed counsel in a
19 suit against a non-government-affiliated private defendant. In
20 that case, the plaintiff had brought a claim for conversion against
21 his former attorney, who had allegedly sold the plaintiff's car
22 without his permission while the plaintiff was in prison. Peterson
23 v. Nadler, 452 F.2d 754 (8th Cir. 1971). As a criminal defense
24 attorney's misconduct against his client implicates due process and
25 other constitutional guarantees, that case may be unique and
26 limited to its facts.

27 In a case much like this one, on the other hand, the Western
28 District of Wisconsin noted:

1 I believe that the court of appeals did not intend district
2 courts to evaluate the need for counsel in personal injury
3 lawsuits in the same manner as in federal question litigation.
4 The primary reason is that personal injury claims have an
5 economic value that makes meritorious claims attractive to
6 lawyers without any need for judicial intervention It
7 might be somewhat more difficult for a prisoner to find legal
8 representation because he is not able to make a personal visit
9 to the lawyer's office, but there is no reason to believe that
10 any prisoner with a meritorious personal injury claim could
11 not find a capable lawyer willing to provide representation.
12 If counsel refuse to take the claim because it appears
13 unlikely to succeed . . . there is no reason for the court to
14 intervene to require a lawyer to proceed with prosecution of
15 the claim.

16 Lipscomb v. Gen. Foods Corp., 615 F. Supp. 254, 257 (W.D. Wis.
17 1985). Similarly, in a suit like this one, which involves claims
18 against an insurer under a statute that provides for attorney's
19 fees, Mo. Ann. Stat. § 375.296, it seems likely that a plaintiff
20 with a meritorious case could reach some sort of contingency
21 agreement with a private attorney.

22 Even assuming § 1915(e)(1) applies to lawsuits between private
23 parties, it might be reasonable in such cases to demand that the
24 indigent litigant make at least some attempt to secure private
25 counsel before asking the court to appoint counsel. See, e.g.,
26 Bracey v. Grondin, 712 F.3d 1012, 1016 (7th Cir. 2013) (requiring
27 an indigent litigant to "make reasonable efforts at finding counsel
28 himself"). Plaintiff has not shown that he has attempted to obtain

1 private counsel in this case or argued that it would be impractical
2 for him to do so.

3 Additionally, when a court asks an attorney to represent an
4 indigent party, what gives heft to that request is not that it is
5 mandatory (it is not), but that attorneys have a non-binding moral
6 and professional obligation to provide the indigent with some
7 access to legal services. See, e.g., Mallard v. U.S. Dist. Court
8 for S. Dist. of Iowa, 490 U.S. 296, 310-11 (1989) (Kennedy, J.,
9 concurring) ("Lawyers, like all those who practice a profession,
10 have obligations to their calling which exceed their obligations to
11 the State Accepting a court's request to represent the
12 indigent is one of those traditional obligations."). Because pro
13 bono representation is a limited resource, the Court should lean on
14 that obligation primarily in cases where the gravest harms to
15 justice are likely to occur, such as in civil rights claims.

16 Moreover, appointment of counsel under § 1915(e)(1) "is
17 granted only in exceptional circumstances," and requires an
18 evaluation of "at least" the likelihood of success on the merits
19 and the indigent plaintiff's "ability to articulate his claims in
20 light of the complexity of the legal issues involved." Agyeman v.
21 Corr. Corp. of Am., 390 F.3d 1101, 1103 (9th Cir. 2004) (internal
22 quotation marks omitted). While Plaintiff's likelihood of success
23 on the merits is hard to estimate at this stage, if he is likely to
24 succeed, that suggests, as noted above, that he could probably find
25 a private attorney to take the case for him. As to the other
26 prong, Plaintiff has clearly and capably articulated his claims,
27 which do not seem legally complex, in his Complaint. Plaintiff's
28 motion is based on the practical hurdles he faces in this

1 litigation, not on an inability to understand and argue the law.
2 The Court does not find that "exceptional circumstances" are
3 present here.

4 The motion for request of counsel is DENIED. However,
5 recognizing the unusual circumstances under which the parties are
6 forced to litigate, the Court is willing to work flexibly with them
7 on scheduling and other issues that are impacted by Plaintiff's
8 incarcerated status.

9
10 IT IS SO ORDERED.

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12 Dated: April 10, 2015


DEAN D. PREGERSON
United States District Judge