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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DALE M. WALLIS, D.V.M., JAMES
L. WALLIS, and HYGIEIA
BIOLOGICAL LABORATORIES, INC.,
a California Corporation,

NO. CIV. 08-02558 WBS GGH

Plaintiffs,

v.

MEMORANDUM AND ORDER RE:
MOTION FOR JUDGMENT ON THE
PLEADINGS AND MOTION TO
STRIKE

CENTENNIAL INSURANCE COMPANY,
INC., a New York corporation,
ATLANTIC MUTUAL INSURANCE,
CO., INC., a New York
corporation,

Defendants,

_____ /

AND RELATED COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT.

_____ /

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Plaintiffs Dale M. Wallis ("Dr. Wallis"), James L.
Wallis ("Mr. Wallis"), and Hygieia Biological Laboratories Inc.
("Hygieia") brought this action against defendants Centennial
Insurance Company Inc. and Atlantic Mutual Insurance Co. Inc.
alleging breach of insurance contract, breach of the implied

1 covenant of good faith and fair dealing, and breach of fiduciary
2 duty relating to plaintiffs' veterinarian professional liability
3 insurance policy. Defendants now move for judgment on the
4 pleadings pursuant to Federal Rule of Civil Procedure 12(c) on
5 plaintiffs' claim for breach of fiduciary duty.¹ Defendants also
6 move to strike plaintiffs' request for injunctive relief pursuant
7 to Federal Rule of Civil Procedure 12(f).

8 I. Factual and Procedural Background

9 Dr. Wallis is a research veterinarian. (Compl. ¶ 8.)
10 Beginning in 1993, Dr. Wallis was involved in a lawsuit over the
11 intellectual property rights to a bovine vaccine she had
12 developed while working for Poultry Health Laboratories ("PHL").
13 (Id. ¶¶ 11-14.) Several related lawsuits ensued, one of which
14 involved a complaint by Dr. Wallis against PHL and its
15 shareholders alleging that she had created the vaccine and that
16 PHL had defrauded her of her invention. (Id. ¶¶ 11-18.) In that
17 action, PHL filed a cross-complaint against Dr. Wallis, Mr.
18 Wallis, and Hygieia alleging unfair competition, interference
19 with contractual relations and prospective economic advantage,
20 misappropriation of trade secrets, and conversion. (Id. ¶ 19.)

21 Defendants in this case provided the defense to the PHL
22 cross-complaint under a reservation of rights pursuant to their
23 standard policy of veterinarian professional liability insurance
24 ("Policy"). (Id. ¶¶ 8, 21.) Dr. Wallis was the named insured

25
26 ¹ Defendants filed a motion to dismiss pursuant to
27 Federal Rule of Civil Procedure 12(b)(6) and 12(c) after they
28 filed their Answer. (See Docket Nos. 9-10.) Because a motion
pursuant to Rule 12(b) "shall be made before pleading," the court
will construe defendants' motion as a motion for judgment on the
pleadings under Rule 12(c). See Fed. R. Civ. P. 12(c), (h)(2).

1 under the Policy, and the Policy also covered Mr. Wallis and
2 Hygieia because of their relationship with Dr. Wallis. (Id. ¶
3 8.)

4 Due to defendants' reservation of rights, plaintiffs
5 obtained counsel of their choice, and defendants proceeded to pay
6 the legal fees and costs incurred by plaintiffs' counsel. (Id.
7 ¶¶ 21-22.) However, defendants have allegedly begun "to impose
8 unreasonable and illegal limitations upon the fees and costs that
9 will be paid" and have "attempt[ed] to control the litigation by
10 refusing to abide by the terms of the Policy." (Id. ¶¶ 22-23.)

11 Plaintiffs filed their Complaint in this case on
12 October 27, 2008, asserting diversity jurisdiction, 28 U.S.C. §
13 1332(a), and alleging breach of insurance contract, breach of the
14 implied covenant of good faith and fair dealing, and breach of
15 fiduciary duty. Presently before the court are defendants'
16 motion for judgment on the pleadings pursuant to Federal Rule of
17 Civil Procedure 12(c) on plaintiffs' claim for breach of
18 fiduciary duty and defendants' motion to strike plaintiffs'
19 request for injunctive relief pursuant to Federal Rule of Civil
20 Procedure 12(f).

21 II. Discussion

22 A. Motion for Judgment on the Pleadings

23 "Judgment on the pleadings is proper when the moving
24 party clearly establishes on the face of the pleadings that no
25 material issue of fact remains to be resolved and that it is
26 entitled to judgment as a matter of law." Hal Roach Studios,
27 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir.
28 1990). The standard applied to a motion for judgment on the

1 pleadings under Federal Rule of Civil Procedure 12(c) is
2 "functionally identical" to the standard applied to motions under
3 Federal Rule of Civil Procedure 12(b)(6) for failure to state a
4 claim upon which relief can be granted. Dworkin v. Hustler
5 Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). "For
6 purposes of the motion, the allegations of the non-moving party
7 must be accepted as true, while the allegations of the moving
8 party which have been denied are assumed to be false." Hal Roach
9 Studios, 896 F.2d at 1550. Judgment on the pleadings may be
10 granted as to fewer than all of the claims or as to part of a
11 claim. Fed. Election Comm'n v. Adams, 558 F. Supp. 2d 982, 987
12 (C.D. Cal. 2008) (citing Chi-Mil Corp. v. W.T. Grant Co., 70
13 F.R.D. 352, 358 (E.D. Wis. 1976)).

14 "Although an insurer may have special duties to an
15 insured, it is well-established that these duties do not give
16 rise to a fiduciary relationship." Valley Air Conditioning &
17 Repair, Inc. v. Beneficial Life Ins. Co., No. 07-01087, 2007 WL
18 2758018, at *2 (E.D. Cal. Sept. 19, 2007) (Ishii, J.) (citing Vu
19 v. Prudential Prop. & Cas. Ins. Co., 26 Cal. 4th 1142, 1151
20 (2001)). Therefore, "Ninth Circuit courts, construing California
21 law," have held that an insurer-insured relationship "does not
22 provide for an independent action for common law breach of
23 fiduciary duty." Negrete v. Fid. & Guar. Life Ins. Co., 444 F.
24 Supp. 2d 998, 1003-04 (C.D. Cal. 2006) (citing Solomon v. N. Am.
25 Life & Cas. Ins. Co., 151 F.3d 1132, 1138 (9th Cir. 1998); Almon
26 v. State Farm Fire & Cas. Co., 724 F. Supp. 765 (S.D. Cal. 1989);
27 Kanne v. Conn. Gen. Life Ins. Co., 607 F. Supp. 899 (C.D. Cal.
28 1985)).

1 While some courts have loosely asserted that "a first
2 party insurer owes a fiduciary duty to its insured," See Estate
3 of Parker v. AIG Life Ins., 317 F. Supp. 2d 1167 (C.D. Cal.
4 2004), the overwhelming weight of authority indicates that such
5 is not the law of California. See Hassard, Bonnington, Roger &
6 Huber v. Home Ins. Co., 740 F. Supp. 789, 791 (S.D. Cal. 1990)
7 ("Despite the seeming trend of cases in California to analogize
8 the insurer-insured relationship to a fiduciary relationship, the
9 cases which have directly addressed this point have held that
10 this relationship does not produce a fiduciary duty."); see also
11 Vu, 26 Cal. 4th at 1151; Love v. Fire Ins. Exchange, 221 Cal.
12 App. 3d 1136, 1148 (1990). Indeed, most courts have found that
13 "the sounder approach is for courts to analyze an insurer's
14 alleged breach of its 'fiduciary-like duties' as a claim for
15 breach of the covenant of good faith and fair dealing." Butler
16 v. Clarendon Am. Ins. Co., 494 F. Supp. 2d 1112, 1136 (N.D. Cal.
17 2007); see Alta Bates Summit Med. Ctr. v. United of Omaha Life
18 Ins. Co., No. 07-04224, 2009 WL 57108, at *4 (N.D. Cal. Jan. 8,
19 2009) ("'[A]n insurer's alleged breach of its "fiduciary-like
20 duties" is adequately redressed by a claim for breach of the
21 covenant of good faith and fair dealing implied in the insurance
22 contract.'" (quoting Tran v. Farmers Group, Inc., 104 Cal. App.
23 4th 1202, 1212 (2002))).

24 The few cases permitting insureds to bring claims for
25 breach of fiduciary duty against insurers have involved "the
26 formation of a fiduciary relationship based on other acts or
27 representations" that create "more than just an insurer-insured
28 relationship." In re Conseco Ins. Co. Annuity Mktg. & Sales

1 Practices Litig., No. 05-04726, 2007 WL 486367, at *7 (N.D. Cal.
2 Feb. 12, 2007); see Negrete, 444 F. Supp. 2d at 1004
3 (“[P]laintiffs allegations are sufficient to state [a] claim for
4 common law breach of fiduciary duty against defendant, in that
5 the relationship alleged is not simply that of an
6 insurer-insured, but rather one which may entail a fiduciary
7 duty.”). In this case, however, there is no allegation nor any
8 suggestion of any source of fiduciary obligation other than the
9 insurer-insured relationship. (See Compl. ¶ 43 (“By issuing the
10 Policy to plaintiffs and accepting premiums therefore, defendants
11 created a fiduciary relationship between themselves and
12 plaintiffs, and said fiduciary relationship existed at all times
13 relevant herein.”).) Accordingly, the court must grant
14 defendants’ motion for judgment on the pleadings on plaintiffs’
15 claim for breach of fiduciary duty.

16 B. Motion to Strike

17 Pursuant to Federal Rule of Civil Procedure 12(f), a
18 court “may strike from a pleading an insufficient defense or any
19 redundant, immaterial, impertinent, or scandalous matter.” Here,
20 defendants contend that the court should strike plaintiffs’
21 request for injunctive relief because the Complaint “fail[s] to
22 allege any facts to support such extraordinary relief.” (Mot.
23 Dismiss 5.) Specifically, defendants argue that the Complaint
24 merely alleges a “billing dispute” for which monetary damages
25 provide adequate relief. (Id. at 1, 5.)

26 A careful review of the Complaint, however, reveals
27 that plaintiffs have alleged more than a mere billing dispute
28 that can be remedied by money damages; the Complaint alleges that

1 defendants have effectively used their financial position to
2 "control the selection of counsel . . . and to control the
3 [plaintiffs' litigation] strategy." (Compl. ¶ 26; see id. ¶¶ 34-
4 35 ("[P]laintiffs will be seeking injunctive relief to require
5 that . . . defendants stop imposing 'billing guidelines' . . .
6 and that defendants be prohibited from attempting to control the
7 defense strategies and litigation . . .").) Under the liberal
8 pleading requirements of Federal Rule of Civil Procedure 8(a),
9 plaintiffs' allegations are sufficient to survive a motion to
10 strike their request for injunctive relief at this early stage in
11 the litigation.

12 While defendants correctly note that injunctive relief
13 requires "the likelihood of substantial and immediate irreparable
14 injury and the inadequacy of remedies at law," Orantes-Hernandez
15 v. Thornburgh, 919 F.2d 549, 558 (9th Cir. 1990) (quoting LaDuke
16 v. Nelson, 762 F.2d 1318, 1324 (9th Cir. 1985)), this
17 determination is properly made "after a full adjudication of the
18 parties' rights," McKenney v. Hernandez, No. 07-1735, 2008 WL
19 4159621, at *9 (S.D. Cal. Sept. 8, 2008) (quoting Judge William
20 W. Schwarzer et al., California Practice Guide: Federal Civil
21 Procedure Before Trial § 13:11 (2008)); see id. ("The
22 pre-discovery period is not the appropriate time to decide
23 whether Plaintiff is entitled to a permanent injunction . . .
24 ."); see also Orantes-Hernandez, 919 F.2d at 558 ("[T]he
25 plaintiff seeking an injunction must prove the plaintiff's own
26 case and adduce the requisite proof, by a preponderance of the
27 evidence, of the conditions and circumstances upon which the
28 plaintiff bases the right to and necessity for injunctive

1 relief.").

2 Further, defendants' insistence that the Complaint must
3 allege "that plaintiffs are likely to prevail" on the merits
4 confuses preliminary injunctions with permanent injunctions. See
5 Haw. County Green Party v. Evans, No. 03-0078, 2003 WL 25289318,
6 at *2 (N.D. Cal. Jan. 24, 2003) ("The standard for a preliminary
7 injunction is essentially the same as for a permanent injunction
8 with the exception that the plaintiff must show a likelihood of
9 success on the merits rather than actual success." (quoting Amoco
10 Prod. Co. v. Village of Gambell, Alaska, 480 U.S. 531, 546 n.12
11 (1987))). Although plaintiffs allege that "the conduct at issue
12 must be addressed in an expedited manner at the outset" (Compl. ¶
13 34), they have made no request for preliminary injunctive relief
14 at this time, and they may do so only by separate motion pursuant
15 to Federal Rule of Civil Procedure 65 and Eastern District Local
16 Rule 65-231.

17 Accordingly, the court must deny defendants' motion to
18 strike plaintiffs' request for injunctive relief.

19 IT IS THEREFORE ORDERED that defendants' motion for
20 judgment on the pleadings on plaintiffs' claim for breach of
21 fiduciary duty be, and the same hereby is, GRANTED; and

22 IT IS FURTHER ORDERED that defendants' motion to strike
23 plaintiffs' request for injunctive relief be, and the same hereby
24 is, DENIED.

25 DATED: February 3, 2009

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WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE