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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SHOCK TRAUMA AIR RESCUE,  
Plaintiff,  
v.  
AIG DOMESTIC CLAIMS, INC., et al.,  
Defendants.

No. 2:09-cv-00759-MCE-JFM  
MEMORANDUM AND ORDER

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Plaintiff, California Shock Trauma Air Rescue ("Plaintiff" or "CALSTAR"), initiated this action against numerous Defendants seeking to recover compensation for services rendered. Presently before the Court are one Motion to Dismiss (Docket No. 32) and one Motion to Consolidate (Docket No. 17). Pending for hearing at a later date is a separate Motion to Dismiss (Docket No. 55).

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1 For the following reasons, the Motion to Dismiss for lack of  
2 subject matter jurisdiction is granted, and all remaining Motions  
3 are denied as moot.<sup>1</sup>

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5 **BACKGROUND<sup>2</sup>**  
6

7 Plaintiff is an air ambulance provider rendering services  
8 within and between California and Nevada. Plaintiff is certified  
9 by the Federal Aviation Administration to operate as an air  
10 carrier and to conduct common carriage operations. Defendants  
11 are: 1) insurance companies providing workers' compensation  
12 insurance within the State of California; and 2) employers who  
13 are self-insured for workers' compensation insurance having  
14 obtained a certificate of consent to self-insure against such  
15 claims.

16 Plaintiff has and continues to provide, on request, air  
17 ambulance services to employees of the Employer Defendants and to  
18 employees of the employers insured by the Insurer Defendants.  
19 After providing relevant services, Plaintiff sends an invoice to  
20 the appropriate Insurer Defendant or Employer Defendant.

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26 <sup>1</sup> Because oral argument will not be of material assistance,  
27 the Court ordered this matter submitted on the briefing. E.D.  
28 Cal. Local Rule 78-230(h).

<sup>2</sup> The following facts are taken, for the most part verbatim,  
from Plaintiff's Second Amended Complaint ("SAC").

1 In this case, Plaintiff alleges that the Defendants have  
2 paid only a portion of those invoiced amounts. According to  
3 Plaintiff, Defendants have refused to pay the outstanding  
4 balances, claiming that Plaintiff is limited to recovering only  
5 those amounts set forth in California's Official Medical Fee  
6 Schedule for ambulance services ("OMFS"), California Code of  
7 Regulations, title 8, section 9789.80.

8 Thus, Plaintiff filed the instant action seeking to recover  
9 those outstanding balances. According to Plaintiff, Defendants  
10 cannot rely on the OMFS fee limitations because that state law is  
11 preempted by the Federal Aviation Act of 1958, as amended by the  
12 Airline Deregulation Act, 49 U.S.C. § 41713(b)(1) ("FAA/ADA").

13 As such, Plaintiff has brought causes of action for:

- 14 1) Declaratory Relief as to whether that state law is preempted;  
15 2) Quantum Meruit; 3) Unjust Enrichment; and 4) Open Book  
16 Account.

17 Plaintiff asserts jurisdiction is proper under 28 U.S.C.  
18 § 1331 because this action allegedly arises under the FAA/ADA.  
19 Defendants do not agree and have moved to dismiss for lack of  
20 subject matter jurisdiction. Also pending before this Court are  
21 the above-mentioned Motion to Consolidate and separate Motion to  
22 Dismiss, each of which is also disposed of pursuant to this  
23 Memorandum and Order.

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1 This Court disagrees, finds jurisdiction over Plaintiff's  
2 Declaratory Relief Claim lacking, and, in turn, finds 28 U.S.C.  
3 § 1367 inapplicable.

4 "The district courts shall have original jurisdiction of all  
5 civil actions arising under the Constitution, laws, or treaties  
6 of the United States." 28 U.S.C. § 1331. "Even though state law  
7 creates [Plaintiff's] causes of action, its case might still  
8 'arise under' the laws of the United States if a well-pleaded  
9 complaint established that its right to relief under state law  
10 requires resolution of a substantial question of federal law in  
11 dispute between the parties." Franchise Tax Bd. of the State of  
12 Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1,  
13 13 (1983). Plaintiff asserts that such is the case here.

14 However, while the facts of this case make for awkward  
15 jurisdictional analysis, this Court disagrees. In a typical case  
16 of this nature, in which one party is asserting preemption as a  
17 basis of federal jurisdiction, a plaintiff claims that a  
18 defendant violated state law and the defendant responds by  
19 raising a preemption defense. In those cases, the plaintiff  
20 typically requests a declaration more specific to the facts  
21 relevant to its underlying claims. For example:

22 Plaintiff's Complaint asserted that "[t]here was at the  
23 time of the levies alleged above and continues to be an  
24 actual controversy between the parties concerning their  
25 respective legal rights and duties. The Board  
26 [appellant] contends that defendants [CVLT] are  
27 obligated and required by law to pay over to the Board  
28 all amounts held ... in favor of the Board's delinquent  
taxpayers. On the other hand, defendants contend that  
section 514 of ERISA preempts state law and that the  
trustees lack the power to honor the levies made upon  
them by the State of California." Franchise Tax Board,  
463 U.S. at 6, quoting App. 8-9.

1 Plaintiffs "invoked the Federal Declaratory Judgment  
2 Act for a declaration that the contracts were still 'in  
3 effect and binding upon the parties thereto.'" Skelly  
Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671  
(1950).

4 It is well-established that the federal courts lack jurisdiction  
5 over such claims.

6 Indeed, "a federal court does not have original jurisdiction  
7 over a case in which the complaint presents a state-law cause of  
8 action, but also asserts that federal law deprives the defendant  
9 of a defense he may raise, or that a federal defense the  
10 defendant may raise is not sufficient to defeat the claim."

11 Franchise Tax Bd., 463 U.S. at 10 (1983), citing Taylor v.  
12 Anderson, 234 U.S. 74, 75-76 (1914); Louisville & Nashville R.  
13 Co. v. Mottley, 211 U.S. 149 (1908); Tennessee v. Union &  
14 Planters' Bank, 152 U.S. 454 (1894). "[A] right or immunity  
15 created by the Constitution or laws of the United States must be  
16 an element, and an essential one, of the plaintiff's cause of  
17 action.'" Id., quoting Gully v. First Nat'l Bank, 299 U.S. 109,  
18 112 (1936). Moreover, "if, but for the availability of the  
19 declaratory judgment procedure, the federal claim would arise  
20 only as a defense to a state created action, jurisdiction is  
21 lacking.'" Id. at 16, quoting 10A C. Wright, A. Miller & M.  
22 Kane, Federal Practice and Procedure § 2767, at 744-745 (2d ed.  
23 1983).

24 Thus, had Plaintiff gone the traditional route, seeking, for  
25 example, a declaration that Defendants are required by law to pay  
26 in full the amounts invoiced, then the instant jurisdictional  
27 question would not appear to be so complicated.

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1 Rather, had Plaintiff requested a declaration more specific to  
2 the instant facts, Defendants would be expected to defend on the  
3 grounds that the payments already made comport with the  
4 California OMFS, at which time Plaintiff anticipates it would  
5 argue that the OMFS is preempted.

6 At best, such a claim would seek resolution of a federal  
7 question anticipated to be raised as a rebuttal to an expected  
8 defense. Since it is well-established that the anticipation of a  
9 defense is insufficient to establish federal question  
10 jurisdiction, "even if the defense is anticipated in the  
11 plaintiff's complaint, and even if both parties admit that the  
12 defense is the only question truly at issue," Franchise Tax Bd.,  
13 463 U.S. 14, Plaintiff's jurisdictional argument, which is even  
14 more attenuated, must likewise fail. Id. at 10 (the assertion  
15 that "federal law deprives the defendant of a defense he may  
16 raise" is insufficient to invoke federal jurisdiction).

17 Therefore, in light of the above analysis, and in an attempt  
18 to couch its preemption claim in an offensive posture, Plaintiff  
19 seeks instead a declaration that "California Labor Code Section  
20 5307.1 and the Official Medical Fee Schedule for ambulance  
21 services, California Code of Regulations, title 8, section  
22 9789.70, are preempted by the provisions of the Federal Aviation  
23 Act of 1958, as amended by the Airline Deregulation Act, 49  
24 U.S.C. section 41713(b)(1)." SAC, 11:17-21. Accordingly, by way  
25 of analogy, Plaintiff contends this Court has jurisdiction under  
26 the slightly different rules of Shaw v. Delta Air Lines, Inc.,  
27 463 U.S. 85 (1983), and its progeny.

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1 In Shaw, the plaintiffs initiated three actions against  
2 state agencies and officials, seeking declarations that various  
3 state laws were preempted by ERISA. Id. at 92. The Supreme  
4 Court determined its jurisdiction over those claims was proper,  
5 stating, in part, "It is beyond dispute that federal courts have  
6 jurisdiction over suits to enjoin state officials from  
7 interfering with federal rights. A plaintiff who seeks  
8 injunctive relief from state regulation, on the ground that such  
9 regulation is pre-empted by a federal statute which, by virtue of  
10 the Supremacy Clause of the Constitution, must prevail, thus  
11 presents a federal question which the federal courts have  
12 jurisdiction under 28 U.S.C. § 1331 to resolve. This Court, of  
13 course, frequently has resolved pre-emption disputes in a similar  
14 jurisdictional posture." Id. at 96 n.14.

15 In that same note, the Shaw Court distinguished its  
16 Franchise Tax Board decision, which was rendered that same day,  
17 by pointing out that the Shaw plaintiffs sought a declaration  
18 that state law was preempted, while the Franchise Tax Board  
19 plaintiffs sought a declaration that state law was not preempted.  
20 Id. Relying on the Shaw footnote, Plaintiff makes the analytical  
21 leap to the conclusion that, since Plaintiff in this case seeks a  
22 declaration that state law is preempted, this Court has  
23 jurisdiction. The flaws in this argument are two-fold and inter-  
24 related. First, Plaintiff's requested relief is improper when  
25 directed at the instant Defendants. Second, because Plaintiff  
26 has asserted the instant declaratory relief claim against  
27 improper Defendants, its instant claim does not present a  
28 justiciable case or controversy.



1 Plaintiff is quite correct that the Shaw Court exercised  
2 jurisdiction over an action seeking a declaration that state law  
3 was preempted. However, jurisdiction in Shaw and its progeny was  
4 premised on the Court's power to enjoin state officials from  
5 interfering with federal rights. When a suit is initiated  
6 against a state official to challenge a state law as preempted by  
7 federal law, jurisdiction is proper under Shaw because the  
8 preemption question is one that directly concerns the state's  
9 power to legislate in a manner inconsistent with some federal  
10 mandate. Indeed, "the Supremacy Clause itself provides subject  
11 matter jurisdiction for the federal court." Harding v. Summit  
12 Med. Ctr., 41 Fed. Appx. 83, 85 (9th Cir. 2002) (unpublished  
13 disposition), citing Hydrostorage, Inc., v. N. Cal. Boilermakers  
14 Local Joint Apprenticeship Comm., 891 F.2d 719, 724-25 (9th Cir.  
15 1989), abrogated on other grounds in Engine Mfrs. Ass'n v. South  
16 Coast Air Quality Mgmt. Dist., 498 F.3d 1031 (9th Cir. 2007).

17 However, in this case, Plaintiffs have sued only insurers  
18 and self-insured employers. Thus, rather than properly  
19 challenging the State's power to enforce the OMFS, Plaintiffs ask  
20 this Court, in an action against third-parties, to declare that  
21 state law is preempted by federal law.

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1 Nevertheless, since none of the present Defendants have "the  
2 ability to enact or enforce state laws," they cannot interfere  
3 with Plaintiff's rights under the Supremacy Clause.<sup>3</sup> Id. The  
4 instant Defendants are simply the wrong parties against whom to  
5 assert such a claim.

6 Viewed from another perspective, Plaintiff's declaratory  
7 relief claim simply does not present the justiciable case or  
8 controversy that is a prerequisite to an assertion of this  
9 Court's jurisdiction. To the contrary, if the Court were to  
10 grant Plaintiff its requested declaratory relief, it would be  
11 required to issue an impermissible advisory opinion. While "[i]t  
12 is clear that a conflict between a state statute and federal  
13 regulations presents a justiciable controversy," National Labor  
14 Relations Bd. v. North Dakota, 504 F. Supp. 2d 750, 754 (D. N.D.  
15 2007), citing Conference of Fed. Sav. and Loan Ass'ns v. Stein,  
16 604 F.2d 1256, 1259 (9th Cir. 1979), under the above analysis,  
17 that controversy is capable of federal adjudication, in other  
18 words is ripe, only when the State is a party to the action. See  
19 Harding, 41 Fed. Appx. 83 at 85. Such is not the case here.

20 Instead, the instant preemption question takes root in the  
21 parties' current dispute only through analysis of Plaintiff's  
22 state law claims and then, as discussed above, only by way of a  
23 rebuttal to a defense.

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26 <sup>3</sup> Though some of the Defendants are local entities or  
27 agencies, they were not sued in their enforcement or legislative  
28 capacities, but, instead, as self-insured employers. Thus, the  
question of whether, under a different set of facts, a suit  
against those entities would be proper is not currently before  
the Court.

1 Accordingly, any controversy that may exist under Plaintiff's  
2 first cause of action, which serves only to assert a response to  
3 an anticipated defense, is even more attenuated than it might be  
4 directly under an analysis of the state law claims.

5 Accordingly, when distilled to its essence, resolution of  
6 Plaintiff's declaratory relief claim, at least between the  
7 current parties, would require the Court to issue nothing more  
8 than an advisory opinion as to preemption of the OMFS. It is  
9 well-established that this Court lacks the power to do so. See  
10 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-127 (2007)  
11 (reiterating the requirement that "the dispute be 'definite and  
12 concrete, touching the legal relations of parties having adverse  
13 legal interests'; and that it be 'real and substantial' and  
14 'admi[t] of specific relief through a decree of a conclusive  
15 character, as distinguished from an opinion advising what the law  
16 would be upon a hypothetical state of facts.'"), quoting *Aetna  
17 Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240-  
18 241 (1937). As such, this Court lacks subject matter  
19 jurisdiction over Plaintiff's first cause of action.

20 The Court is not persuaded otherwise by Plaintiff's  
21 observation that this preemption issue, under these facts, would  
22 never arise directly as a defense because the State of California  
23 will likely never institute proceedings to enforce the OMFS  
24 against Plaintiff, and Defendants will likely never be motivated  
25 to pursue coercive claims against Plaintiff, either of which  
26 scenarios could change the jurisdictional analysis. Even  
27 assuming, *arguendo*, that Plaintiff is correct, the boundaries of  
28 this Court's jurisdiction remain unchanged.

1 While Plaintiff appears to presume that if its argument cannot be  
2 raised as a defense, it must be part and parcel of its  
3 affirmative claim for relief, for jurisdictional purposes, the  
4 very unlikelihood that Plaintiff's argument could even be raised  
5 as a defense, let alone an affirmative claim, renders the  
6 possibility of jurisdiction in this Court even more remote.  
7 Accordingly, this Court is not empowered to entertain Plaintiff's  
8 first claim for relief.

9  
10 **2. Plaintiff's State Law Claims**

11  
12 Finally, Plaintiff contends that its state law claims,  
13 themselves, arise under federal law. However, as previously  
14 stated, in the context of Plaintiff's state law claims, the  
15 preemption argument will arise, if at all, only as a rebuttal to  
16 an anticipated defense. Accordingly, this Court also lacks  
17 jurisdiction independently over Plaintiff's state law claims.  
18 See Franchise Tax Bd., 463 U.S. at 13-14.

19  
20 **CONCLUSION**

21  
22 In sum, Defendants' Motion to Dismiss for Lack of Subject  
23 Matter Jurisdiction (Docket No. 32) is GRANTED. The remaining  
24 Motion to Dismiss (Docket No. 55) and Motion to Consolidate  
25 (Docket No. 17) are DENIED as moot.

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1 All future hearing dates are ordered vacated and the Clerk of the  
2 Court is directed to close the file.

3 IT IS SO ORDERED.

4 Dated: July 23, 2009

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7 MORRISON C. ENGLAND, JR.  
8 UNITED STATES DISTRICT JUDGE  
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