

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS INDEMNITY COMPANY OF)	Case No. 14-cv-02378
CONNECTICUT; and ST. PAUL FIRE)	
AND MARINE INSURANCE COMPANY,)	ORDER REQUESTING ADDITIONAL
)	<u>BRIEFING</u>
Plaintiffs,)	
)	
v.)	
)	
CENTEX HOMES; and CENTEX REAL)	
ESTATE CORPORATION,)	
)	
Defendants.)	
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Now pending before the Court is Defendants' motion to dismiss Plaintiffs' First Amended Complaint, ECF No. 20 ("FAC"), for lack of subject-matter jurisdiction and failure to state a claim. ECF No. 21 ("Mot."). Plaintiffs have opposed the motion, ECF No. 22, and Defendants have replied. ECF No. 25. The only basis for subject-matter jurisdiction asserted in the FAC is diversity jurisdiction under 28 U.S.C. Section 1332. FAC ¶ 6. That statute invests federal district courts with original jurisdiction over civil actions in which the parties are diverse and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Defendants do not dispute that diversity exists, but they claim that the amount

1 in controversy does not exceed \$75,000.

2 The amount in controversy in this case will be defined almost
3 exclusively by the fees and costs incurred by Defendants in an
4 underlying lawsuit in California state court. Defendants argue
5 that the amount in controversy does not exceed \$75,000 because, at
6 the time the suit was filed, "Travelers had not paid anything in
7 defense fees and costs, and the total defense fees and costs
8 incurred by Centex Homes and Centex Real Estate were only
9 \$6,304.33" Mot. at 16. Plaintiffs retort that they expect
10 the fees in the underlying action to exceed \$300,000 before that
11 case is concluded. Opp'n at 18. However, Plaintiffs' pleadings
12 cast doubt on that assertion.

13 One of Plaintiffs' claims is for equitable reimbursement. FAC
14 ¶¶ 36-40. The parties agree that, to state a claim for equitable
15 reimbursement, an insurer must defend a third-party action in its
16 entirety. See Mot. at 13; Opp'n at 13. The underlying state
17 action is ongoing, but Plaintiffs assert that their duty to defend
18 ceased upon Defendants' alleged breach of the insurance contract.
19 Therefore, Plaintiffs claim, they have honored their duty to
20 defend. According to Plaintiffs, an insurer defends an action in
21 its entirety when it defends until either "the underlying lawsuit
22 is concluded or at any time when it can be shown that there is no
23 potential for coverage under the particular policy or policies."
24 Opp'n at 14 (emphasis added). To that end, Plaintiffs plead in
25 their FAC that "[a]s a result of CENTEX's breach of the insurance
26 policies . . . , TRAVELERS' duty to defend CENTEX has now ceased
27 and any payments made to CENTEX for fees incurred from the date of
28 tender until the date of CENTEX's breach constitute an entire

1 defense." FAC ¶ 38 (emphasis added).

2 It is unclear to the Court how Plaintiffs' arguments regarding
3 the amount in controversy and the duty to defend can be consistent.
4 On one hand, Plaintiffs allege that their duty to defend has ceased
5 and that there is no potential for coverage under any of
6 Defendants' policies. They also assert that the fees and costs
7 incurred from the date of tender until the date of the alleged
8 breach constitute an entire defense. On the other hand,
9 Plaintiffs' sole argument for subject-matter jurisdiction depends
10 upon fees and costs that will be incurred in the future -- after
11 Plaintiffs' duty to defend has ceased, after the point at which
12 there is no potential for coverage, and after Plaintiffs have
13 honored their duty to provide an entire defense. If it is true
14 that Plaintiffs have already honored their duty to defend the
15 underlying litigation in its entirety, the Court does not
16 understand how the amount in controversy could possibly exceed the
17 approximately \$6,304.33 incurred to date.

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1 Neither party has briefed this issue. Accordingly, the Court
2 hereby ORDERS Plaintiffs to submit to the Court, within fourteen
3 (14) days of the signature date of this order, a supplemental brief
4 of not more than ten (10) pages explaining how the amount in
5 controversy requirement can be met in this case. Defendants may
6 submit a supplemental response brief on this issue within ten (10)
7 days of Plaintiffs' submission.

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IT IS SO ORDERED.

Dated: November 17, 2014


UNITED STATES DISTRICT JUDGE