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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ENCOMPASS INSURANCE COMPANY OF)
AMERICA,)
Plaintiff,)
vs.)
WENDY MACADANGDANG as special)
administrator on behalf of ESTATE OF DANNY)
MACADANGDANG, SIERRA)
MACADANGDANG,)
Defendants.)

2:09-cv-02070-RCJ-RJJ

ORDER

INTRODUCTION

This case arises out of a motor vehicle accident and the ensuing dispute over insurance coverage. Defendants Wendy Macadangang, as special administrator of the Estate of Danny Macadangang, who is deceased, Wendy Macadangang, in her individual capacity, and Wendy Macadangang, as Guardian ad Litem for Sierra Macadangang, a minor, bring this Motion to Dismiss (#16) pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Plaintiff Encompass Insurance Company of America filed a timely Response (#18) in opposition to Plaintiffs' motion. Plaintiffs filed a timely reply (#20).

The Court has considered all of the pleadings and arguments by the parties.

IT IS HEREBY ORDERED THAT Defendants' Motion to Dismiss (#16) is DENIED.

1 **BACKGROUND**

2 On October 17, 2004, Danny Macadandang was involved in a motor vehicle accident while
3 a passenger in a vehicle driven by Jordan Don Lebie, son of Cindy and Donald Lebie. (Complaint ¶¶
4 10, 19, #1). Plaintiff Encompass Insurance Company of America (“Plaintiff”) issued an insurance
5 policy to Defendants Cindy and Donald Lebie. (*Id.* ¶ 15). Danny Macadandang suffered injuries
6 that ultimately resulted in his death. (*Id.* ¶ 22).

7 The death and injuries to Danny Macadandang prompted Defendant Wendy Macadandang
8 in her individual, as special administrator of the Estate of Danny Macadandang, and as Guardian ad
9 Litem for minor Sierra Macadandang (collectively, “Macadandang” or “Defendants”), to bring a
10 lawsuit against Cindy Lebie and Jordan Lebie in District Court, Clark County, Nevada, Case no.
11 A509128, captioned *Macadandang, et al., v. Lebie, et al.*, on August 26, 2005 (“the Underlying
12 Action”). (*Id.* ¶ 11). In the Underlying Action, Defendants seek damages for negligence, wrongful
13 death, and punitive damages. (*Id.* ¶ 26, #1; #18 Ex. A). The Underlying Action was set for trial on
14 March 15, 2010, but has since been moved to mid-April.

15 Plaintiff’s policy issued to Cindy and Donald Lebie provides coverage for bodily injury
16 liability. (Complaint ¶ 15, #1). The policy limits consist of a “per person” limit in the amount of
17 \$100,000, and a “per occurrence” limit of \$300,000. (*Id.* ¶ 15). The policy was in effect on the date
18 of the accident, October 17, 2004. (*Id.*). The policy also provides that the per person limit is the
19 “TOTAL LIMIT OF LIABILITY FOR DAMAGES BECAUSE OF BODILY INJURY
20 SUSTAINED BY ANY ONE PERSON IN ANY ONE MOTOR VEHICLE ACCIDENT,
21 INCLUDING DAMAGES SUSTAINED BY ANYONE ELSE AS A RESULT OF THAT BODILY
22 INJURY.” (*Id.*). The policy further iterates that “PUNITIVE AND EXEMPLARY DAMAGES
23 ARE NOT COVERED AND THEREFORE ARE NOT INCLUDED IN AND ARE NOT IN
24 ADDITION TO THE LIMIT OF LIABILITY SHOWN IN THE COVERAGE SUMMARY FOR
25 MOTOR VEHICLE LIABILITY.” (*Id.*).

1 It is alleged in Plaintiff's complaint that the Macadangdangs made demands under the policy
2 for the per occurrence limit, \$300,000.00. (*Id.* ¶ 29). Plaintiff has already offered the per person
3 allowance of \$100,000.00 to the Macadangdangs. (*Id.*). Based on this dispute in coverage, Plaintiff
4 seeks declaratory relief from this Court pursuant to 28 U.S.C. § 2201, Fed. R. Civ. P. 57, and N.R.S.
5 Chapter 30.

6 DISCUSSION

7 A. Standard for Motion to Dismiss

8 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim
9 showing that the pleader is entitled to relief" in order to "give the defendant fair notice of what the
10 . . . claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957).
11 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to
12 state a claim upon which relief can be granted. A motion to dismiss under Rule 12(b)(6) tests the
13 complaint's sufficiency. *See North Star Int'l. v. Arizona Corp. Comm'n.*, 720 F.2d 578, 581 (9th Cir.
14 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim,
15 dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally
16 cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
17 554, 127 S. Ct. 1955, 1964 (2007). However, facts must be sufficient to edge a complaint from the
18 conceivable to the plausible in order to state a claim. *Id.* In considering whether the complaint is
19 sufficient to state a claim, the court will take all material allegations as true and construe them in the
20 light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir.
21 1986). The court, however, is not required to accept as true allegations that are merely conclusory,
22 unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State Warriors*,
23 266 F.3d 979, 988 (9th Cir. 2001).

24 The Supreme Court recently clarified that, in order to avoid a motion to dismiss, the
25 complaint must contain "factual content that allows the court to draw the reasonable inference that

1 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, ---- U.S. ----, 129 S.Ct. 1937,
2 1949 (2009). The Court in *Ashcroft* further stated “[w]here a complaint pleads facts that are “merely
3 consistent with” a defendant’s liability, it ‘stops short of the line between possibility and plausibility
4 of entitlement to relief.’” *Id.* Therefore, merely making an allegation is not enough to survive a
5 motion to dismiss; facts that a particular defendant may plausibly be liable for the alleged conduct
6 must be pled.

7 “Generally, a district court may not consider any material beyond the pleadings in ruling on
8 a Rule 12(b)(6) motion However, material which is properly submitted as part of the complaint
9 may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896
10 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly, “documents whose contents are
11 alleged in a complaint and whose authenticity no party questions, but which are not physically
12 attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without
13 converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d
14 449, 454 (9th Cir. 1994). Moreover, under Fed. R. Evid. 201, a court may take judicial notice of
15 “matters of public record.” *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).
16 Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss is
17 converted into a motion for summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*,
18 261 F.3d 912, 925 (9th Cir. 2001).

19 **B. Analysis**

20 Defendants bring this instant motion alleging that there is no case and controversy presented
21 in this action and therefore this Court has no jurisdiction. Defendants fail to address the directly on
22 point case law presented not only in Plaintiff’s complaint, which Defendants are seeking to dismiss,
23 but also in Plaintiff’s opposition. While Defendants’ position as to the case and controversy
24 requirement is rational, it is not supported by this Circuit’s law. In essence, Defendants urge the

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1 Court to make a decision contrary to the law which binds this Court, without even an attempt to
2 distinguish this case from the cases cited by Plaintiff in the complaint.

3 “By the express terms of the Constitution, the exercise of the judicial power is limited to
4 ‘cases’ and ‘controversies.’” *Muskrat v. U.S.*, 219 U.S. 346, 356, 31 S. Ct. 250 (1911). The
5 Declaratory Judgment Act specifically provides a right for claimants seeking declaratory relief in
6 certain situations. The statute provides:

- 7 (a) In a case of actual controversy within its jurisdiction, . . . any court of the
8 United States, upon the filing of an appropriate pleading, may declare the
9 rights and other legal relations of any interested party seeking such
10 declaration, whether or not further relief is or could be sought

11 28 U.S.C. § 2201. As noted by the Ninth Circuit Court of Appeals, “[t]he Declaratory Judgment Act
12 embraces both constitutional and prudential concerns. A lawsuit seeking declaratory relief must first
13 present an actual case or controversy within the meaning of Article III, section 2 of the United States
14 Constitution. It must also fulfill statutory jurisdictional prerequisites.” *Government Employees Ins.*
15 *Co. v. Dizol*, 133 F.3d 1220, 1222–23 (9th Cir. 1998) (internal citations omitted). The United States
16 Supreme Court has held that a case or controversy “must be definite and concrete, touching the legal
17 relations of parties having adverse legal interest. It must be a real and substantial controversy
18 admitting of specific relief through a decree of conclusive character, as distinguished from an opinion
19 advising what the law would be upon a hypothetical state of facts.” *Aetna Life Ins. Co. of Hartford,*
20 *Conn. v. Haworth*, 300 U.S. 227, 240–41, 57 S. Ct. 461 (1937). The Ninth Circuit has elucidated
21 on this principle, holding that where plaintiffs seek declaratory relief, the relevant inquiry is whether
22 there is “sufficient immediacy and reality to warrant the issuance of a declaratory judgement.” *Ross*
23 *v. Alaska*, 189 F.3d 1107, 1114 (9th Cir. 1999).

24 As noted by Plaintiff in the complaint and the response in opposition to Defendants’ motion,
25 the Ninth Circuit has consistently held that a “dispute between an insurer and its insureds over the
duties imposed by an insurance contract satisfies Article III’s case and controversy requirement.”

1 *Gov't Employees Ins. Co.*, 133 F.3d at 1222 n.2. For instance, in *American States Ins. Co. v.*
2 *Kearns*, 15 F.3d 142, 144-45 (9th Cir. 1994), the Ninth Circuit determined that an insurer had a ripe
3 case or controversy where it sought a declaration regarding its obligations in a pending state court
4 action. This is also consistent with the United States Supreme Court's application of the case and
5 controversy requirement in *Maryland Casualty v. Pacific Coal & Oil Co.*, 312 U.S. 270, 61 S. Ct.
6 510 (1941), where the Court held that an insurer's declaratory action regarding its duty to defend and
7 indemnify was sufficiently ripe, even when the underlying liability action in state court had not yet
8 proceeded to judgment.

9 In the present case, Plaintiff seeks declaratory relief regarding its obligations under the policy
10 it has or had with the Lebies. The Macadangdangs are joined as parties, considering that they are the
11 ones making the demands under the policy and are arguably the real parties in interest. It is
12 undisputed that the Macadangdangs claim they are entitled to the per occurrence amount under the
13 policy of \$300,000.00. Plaintiff contends that they are only liable for the \$100,000.00, per person
14 limit, and have offered to pay that policy limit to the Macadangdangs. This is a sufficiently immediate
15 and real controversy under the law of this Circuit and the Supreme Court to warrant jurisdiction. The
16 parties in this suit have adverse legal interests and have a real dispute over the amount owed under
17 the insurance contract.

18 Defendants completely ignore the Ninth Circuit case law raised by Plaintiff. This is in spite
19 of the citations to the cases supporting jurisdiction that were included in Plaintiff's Complaint!
20 Defendants do not even make a good faith attempt to distinguish the present case from those cited
21 by Plaintiff. In the face of the clear citation to contrary law, Defendants chose to instead argue
22 passed the law, in essence, attempting to get this Court to make an incorrect determination. Unlike
23 Defendants' argument that this is merely a potential liability, it is uncontested that Plaintiff has an

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1 obligation to Defendants. This is not a potential liability, but a real liability over which there is a live
2 dispute as to coverage. As has already been discussed in the case law cited above, it is unnecessary
3 for there to be a judgment in the underlying action to make this controversy actionable.

4 **CONCLUSION**

5 IT IS HEREBY ORDERED THAT Defendants' Motion to Dismiss (#16) is DENIED.

6 DATED: This 9th day of June, 2010.

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10 ROBERT C. JONES
11 UNITED STATES DISTRICT JUDGE
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