

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 12, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WILLIAM H. MORGAN,

Plaintiff,

v.

SENTRY INSURANCE COMPANY,  
LLC, et al.,

Defendant.

NO: 2:16-CV-286-RMP

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT is a Motion for Summary Judgment, ECF No. 32, filed by Defendant Sentry Insurance a Mutual Company (identified as "Sentry Insurance Company, LLC") and Defendant Middlesex Insurance Company (identified as "Middlesex Insurance Company, LLC") (collectively, "Defendants"). The Court has reviewed the pleadings and the record, and is fully informed.

**BACKGROUND**

Plaintiff William Morgan brought suit against Defendants, based on claims involving insurance coverage after an automobile accident that allegedly resulted in physical injuries to Mr. Morgan and damage to Mr. Morgan's vehicle. ECF No. 1 at 2; *see also* ECF No. 23-2 at 2; ECF No. 23-2 at 6; ECF No. 23-2 at 10-15. The Court dismissed his Complaint, his First Amended Complaint, and his Second Amended Complaint. ECF Nos. 12, 19, 22. In his Third Amended Complaint, Mr.

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1 Morgan appears to bring claims of breach of contract, negligence, and collusion, as  
2 well as a number of statutory claims. *See* ECF No. 23.

3 The Court has subject matter jurisdiction over this matter pursuant to 28  
4 U.S.C. § 1332 based on the diversity of the parties and the amount in controversy.  
5 Plaintiff Morgan alleges that he is a resident of the state of Oregon. ECF 23 at 3;  
6 ECF No. 32 at 3. Defendants are incorporated in Wisconsin with their principal  
7 places of business in Wisconsin. ECF No. 32 at 3. The amount in controversy is  
8 \$10 million, which exceeds the statutory requirement of \$75,000. ECF No. 23 at 2.

9 “[F]ederal courts sitting in diversity apply state substantive law and federal  
10 procedural law.” *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 666 (9th Cir. 2003).  
11 The substantive law at issue here is insurance law. The insurance policy was issued  
12 in the state of Washington while Mr. Morgan was a Washington resident, and the  
13 accident giving rise to Mr. Morgan’s claims against Defendants also occurred in  
14 Washington. ECF No. 33 at 3-6, 11. Defendants argue that Washington law should  
15 apply to this matter, ECF No. 32 at 4, which Mr. Morgan does not dispute. ECF No.  
16 23 at 5. Therefore, the Court will apply the law of Washington to the substantive  
17 issues in this case.

## 18 **DISCUSSION**

### 19 ***Legal Standard for Summary Judgment***

20 A court may grant summary judgment where “there is no genuine dispute as  
21 to any material fact” of a party’s prima facie case, and the moving party is entitled to

1 judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-33 (1986);  
2 *see also* Fed. R. Civ. P. 56(c). A genuine issue of material fact exists if sufficient  
3 evidence supports the claimed factual dispute, requiring “a jury or judge to resolve  
4 the parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
5 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). “A key purpose of summary  
6 judgment ‘is to isolate and dispose of factually unsupported claims.’” *Id.* (citing  
7 *Celotex*, 477 U.S. at 324).

8         The moving party bears the burden of showing the absence of a genuine issue  
9 of material fact, or in the alternative, the moving party may discharge this burden by  
10 showing that there is an absence of evidence. *See Celotex*, 477 U.S. at 325. The  
11 burden then shifts to the nonmoving party to set forth specific facts showing a  
12 genuine issue for trial. *See id.* at 324. The nonmoving party “may not rest on mere  
13 allegations, but must by [its] own affidavits, or by the depositions, answers to  
14 interrogatories, and admissions on file designate specific facts showing that there is  
15 a genuine issue for trial.” *Id.* The Court will not infer evidence that does not exist in  
16 the record. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990)  
17 (court will not presume missing facts). However, the Court will “view the evidence  
18 in the light most favorable” to the nonmoving party. *Newmaker v. City of Fortuna*,  
19 842 F.3d 1108, 1111 (9th Cir. 2016). “The evidence of the non-movant is to be  
20 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v.*  
21 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

1           ***Claims Against Defendant Sentry Insurance***

2           Mr. Morgan asserts claims against the named defendant, Sentry Insurance.

3           *See* ECF No. 23. Defendants correctly argue that to prevail in a claim for coverage

4           Mr. Morgan has the burden of showing who is insured, the type of risk insured

5           against, and the existence of an insurance contract. ECF No. 32 at 4 (citing *Olivine*

6           *Corp. v. United Capitol Ins. Co.*, 52 P.3d 494, 502 (2002)). Defendants assert that

7           Sentry Insurance never issued any insurance policy to Mr. Morgan. *Id.* Mr. Morgan

8           fails to refute that deficiency by providing evidence that Sentry Insurance issued an

9           insurance policy to him.

10           The Court finds that Mr. Morgan has failed to create a genuine issue of

11           material fact, and failed to support the essential elements of insurance contract

12           claims, against Sentry Insurance. Therefore, the Court finds that summary judgment

13           is proper and dismisses with prejudice Mr. Morgan’s claims against Sentry

14           Insurance.

15           ***Claims Against Defendant Middlesex Insurance***

16           Mr. Morgan also named Middlesex Insurance as a defendant in this matter.

17           *See* ECF No. 23. Defendants do not dispute that Mr. Morgan has provided evidence

18           that he had a valid insurance policy issued by Middlesex Insurance at the time of his

19           car accident. ECF No. 32 at 5. However, Defendants argue that Mr. Morgan’s

20           policy with Middlesex Insurance only provided coverage for his liability to others

21           and that Mr. Morgan rejected, in writing, coverage that would have protected him

1 from underinsured drivers or that would have provided no-fault personal injury  
2 protection, the relevant coverage issues in this case. *Id.*

3 The state of Washington requires insurers to offer underinsured motorist  
4 (“UIM”) coverage and personal injury protection (“PIP”) coverage. RCW  
5 48.22.030; RCW 48.22.085. However, an insured may reject UIM coverage in  
6 writing. RCW 48.22.030(4); *Clements v. Travelers Indem. Co.*, 850 P.2d 1298,  
7 1304-05 (Wash. 1993). A written rejection of UIM coverage satisfies the  
8 requirements of RCW 48.22.030 if it “reflects the insured’s intent to reject UIM  
9 coverage.” *Weir v. Am. Motorists Ins. Co.*, 816 P.2d 1278, 1279 (Wash. Ct. App.  
10 1991). An insured also may reject PIP coverage in writing. RCW 48.22.085(2). In  
11 a similar case, this Court held that an “Acceptance or Rejection” form identical to  
12 the form completed by Mr. Morgan complied with Washington law as a written  
13 rejection of UIM coverage. *See Anson v. Middlesex Ins. Co.*, 2016 WL 7975554  
14 (E.D. Wash. Aug. 8, 2016).

15 Defendants argue that Mr. Morgan rejected in writing both UIM and PIP  
16 coverage for the relevant time period. ECF No. 32 at 5-7. Both parties have  
17 submitted evidence that Mr. Morgan rejected the UIM and PIP coverage.  
18 Defendants submitted an “Acceptance or Rejection” form indicating the rejection of  
19 UIM and PIP coverage, signed by Mr. Morgan, referencing the Middlesex insurance  
20 policy number, and dated the same date as Mr. Morgan purchased his Middlesex  
21 insurance policy. ECF No. 34-1 Ex. 2, at 5. Both parties submitted the Policy

1 Declarations document indicating that UIM and basic PIP coverage had been  
2 rejected. ECF No. 34-1 Ex. 3, at 7; ECF No. 23-1 Ex. A, at 2. Defendants also  
3 submitted a letter explaining the coverage provided by Mr. Morgan's policy and  
4 included a copy of Mr. Morgan's Middlesex Insurance policy application, signed by  
5 Mr. Morgan, stating that Mr. Morgan rejected UIM and PIP coverage. ECF No. 34-  
6 1 Ex. 1, at 2-3; ECF No. 34-1 Ex. 6, at 31-35.

7         However, now Mr. Morgan apparently seeks to recover under his Middlesex  
8 Insurance policy for the injuries and damage caused by another motorist based on  
9 the provisions of UIM and PIP coverage that he previously rejected in writing. *Id.*  
10 Defendants argue that because Mr. Morgan rejected both UIM and PIP coverage  
11 when he purchased the Middlesex Insurance policy, Mr. Morgan is not eligible to  
12 recover for injuries or damages covered under UIM and PIP provisions as an  
13 accident victim. *Id.* Mr. Morgan does not offer any evidence to rebut Defendants'  
14 arguments.

15         Taking all the evidence in the light most favorable to Mr. Morgan, the  
16 nonmoving party, the Court finds that Mr. Morgan has failed to submit any evidence  
17 to create a genuine issue of material fact and has failed to support an essential  
18 element of his insurance contract claims, specifically that he had applied for and  
19 received UIM and PIP coverage when it was offered. Therefore, the Court finds that  
20 summary judgment is properly granted regarding all of Mr. Morgan's insurance  
21

1 contract claims against Middlesex Insurance. Those claims are dismissed with  
2 prejudice.

### 3 *Other Claims*

4 Mr. Morgan's Third Amended Complaint identifies a number of federal  
5 statutes, including the Americans with Disabilities Act, the Federal Tort Claims Act,  
6 and the Lanham Act. *See* ECF No. 23 at 5, 7. Defendants argue that these laws do  
7 not apply to Mr. Morgan's motor vehicle accident or insurance contract claims, and  
8 that these additional claims should be dismissed with prejudice. ECF No. 32 at 7-8.

9 A complaint must set forth the specific facts upon which the plaintiff relies in  
10 claiming the liability of each defendant. *Ivey v. Board of Regents*, 673 F.2d 266, 268  
11 (9th Cir. 1982). The Court has reviewed Mr. Morgan's Third Amended Complaint.  
12 Although the Court construes *pro se* pleadings liberally, *see Haines v. Kerner*, 404  
13 U.S. 519, 520-21 (1972), the Court is unable to ascertain the basis for the alleged  
14 federal claims.

15 In weighing whether to grant leave to amend, the Court considers five factors:  
16 "bad faith, undue delay, prejudice to the opposing party, futility of amendment, and  
17 whether the plaintiff has previously amended the complaint." *Johnson v. Buckley*,  
18 356 F.3d 1067, 1077 (9th Cir. 2004). In the Ninth Circuit, "a district court should  
19 grant leave to amend even if no request to amend the pleading was made, unless it  
20 determines that the pleading could not possibly be cured by the allegation of other  
21 facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

1 In this case, the factual allegations that Mr. Morgan has placed before the  
2 Court in his three prior complaints fail to establish any basis on which any of the  
3 alleged federal claims, such as the Lanham Act, could be based. Therefore, the  
4 Court finds that a fourth amendment would be futile. The Court further finds that  
5 Mr. Morgan's federal claims fail to state claims upon which relief can be granted,  
6 and dismisses the federal claims with prejudice.

7 Accordingly, it is **HEREBY ORDERED**:

- 8 1. Defendants' Motion for Summary Judgment, **ECF No. 32**, is **GRANTED**,  
9 and Judgment shall be entered for Defendants.
- 10 2. Plaintiffs' claims against Defendant Sentry Insurance a Mutual Company  
11 (identified as "Sentry Insurance Company, LLC") and Defendant  
12 Middlesex Insurance Company (identified as "Middlesex Insurance  
13 Company, LLC") are **DISMISSED with prejudice**.
- 14 3. Plaintiff's additional claims are **DISMISSED with prejudice**.

15 The District Court Clerk is directed to enter this Order, enter Judgment  
16 accordingly, provide copies to the parties, and **close this case**.

17 **DATED** January 12, 2018.

18 *s/ Rosanna Malouf Peterson*  
19 ROSANNA MALOUF PETERSON  
20 United States District Judge  
21