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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TILDEN-COIL CONSTRUCTORS,
11 INC.,

Plaintiff,

v.

13 LANDMARK AMERICAN
14 INSURANCE COMPANY,

15 Defendant.

CASE NO. C09-1574JLR

ORDER ON MOTION TO
REMAND

16 This matter comes before the court on Plaintiff Tilden-Coil Constructors, Inc.'s
17 ("Tilden-Coil") motion to remand (Dkt. # 3). The parties have not requested oral
18 argument. Having considered the submissions of the parties, and for the reasons set forth
19 below, the court DENIES Tilden-Coil's motion to remand (Dkt. # 3).

20 **I. BACKGROUND**

21 In March 2007, Tilden-Coil, a California corporation, sued Westec Industries, Inc.
22 ("Westec"), a Washington corporation, in San Bernadino County, California, Superior

1 Court (the “California action”). (*See* Compl. (Dkt. # 1 at 10) ¶¶ 1, 8; *see also* Declaration
2 of Michael J. Crisera (“Crisera Decl.”) (Dkt. # 4), Exs. A, B.) According to its complaint
3 in the California action, Tilden-Coil contracted with Westec to construct belt conveyors
4 for a composting facility in Rancho Cucamonga, California. (Crisera Decl., Ex. A ¶¶ 1,
5 7, 10, 15.) Tilden-Coil alleges that Westec’s belt conveyors were defective, and it seeks
6 damages of over \$2.3 million for breach of contract, negligence, and breach of express
7 and implied warranties. (*See generally id.*) The California action is scheduled for trial in
8 March 2010. (Declaration of William Marchant (“Marchant Decl.”) (Dkt. # 7) ¶ 3.)

9 In October 2009, Tilden-Coil filed suit in King County, Washington, Superior
10 Court (the “Washington action”) seeking a declaratory judgment that Westec’s insurance
11 policy with defendant Landmark Insurance Company (“Landmark”) will cover any
12 liability Westec may have to Tilden-Coil. (Compl. § V.) Landmark removed the action
13 to federal court. (Notice of Removal (Dkt. #1 at 1).) In its Notice of Removal,
14 Landmark alleges that this court has diversity jurisdiction over the action because Tilden-
15 Coil and Landmark are citizens of different states¹ and because the amount in controversy
16 exceeds \$75,000. (*Id.* at 2 (citing 28 U.S.C. § 1332(a)).)

17 Shortly thereafter, Tilden-Coil filed the instant motion to remand. Tilden-Coil
18 contends that because the Washington action is a “direct action” against an insurer within
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21 ¹ Specifically, Tilden-Coil is a California corporation with its principal place of business
22 in California, and Landmark is an Oklahoma corporation with its principal place of business in
Georgia. (*Id.* at 2.)

1 the meaning of 28 U.S.C. § 1332(a)(1), Landmark is a citizen of Washington, and the
2 action is not removable. (Mot. at 3-5.)

3 II. ANALYSIS

4 In general, “[a]ny civil action brought in a State court of which the district courts
5 of the United States have original jurisdiction, may be removed by the defendant[.]” 28
6 U.S.C. § 1441(a). The district courts of the United States have “original jurisdiction”
7 where there is complete diversity between the parties and the amount in controversy
8 exceeds \$75,000. 28 U.S.C. § 1332(a)(1). Actions falling under the court’s diversity
9 jurisdiction are removable, however, “only if none of the parties in interest properly
10 joined and served as defendants is a citizen of the State in which such action is brought.”
11 28 U.S.C. § 1441(b). A federal court must remand a removed case back to state court if
12 there is any defect which causes federal jurisdiction to fail or if there is any defect in the
13 removal procedure. 28 U.S.C. § 1447(c).

14 Normally, a corporation is “deemed to be a citizen of any State by which it has
15 been incorporated and of the State where it has its principal place of business.” 28 U.S.C.
16 § 1332(c)(1). In certain insurance cases, however, an insurer may also be deemed a
17 citizen of a third state: the state of which the insured is a citizen. *Id.* Specifically, the
18 insurer shall be deemed a citizen of the insured’s state of citizenship “in any direct action
19 against the insurer of a policy or contract of liability insurance . . . to which action the
20 insured is not joined as a party-defendant.” *Id.*

21 The term “direct action” in § 1332(c)(1) applies to “those cases in which a party
22 suffering injuries or damage for which another is legally responsible is entitled to bring

1 | suit against the other’s liability insurer without joining the insured or first obtaining a
2 | judgment against him[.]” *Searles v. Cincinnati Ins. Co.*, 998 F.2d 728, 729 (9th Cir.
3 | 1993) (quoting *Beckham v. Safeco Ins. Co.*, 691 F.2d 898, 902 (9th Cir. 1982)).

4 | Moreover, “unless the cause of action urged against the insurance company is of such a
5 | nature that the liability sought to be imposed could be imposed against the insured, the
6 | action is not a direct action.” *Id.* (quoting *Beckham*, 691 F.2d at 901-02). The Supreme
7 | Court has explained the legislative history of the “direct action” provision as follows:

8 | Congress added the proviso to § 1332(c) in 1964 in response to a sharp
9 | increase in the caseload of Federal District Courts in Louisiana resulting
10 | largely from that State’s adoption of a direct action statute. The Louisiana
11 | statute permitted an injured party to sue the tortfeasor’s insurer directly
12 | without joining the tortfeasor as a defendant. Its effect was to create
13 | diversity jurisdiction in cases in which both the tortfeasor and the injured
14 | party were residents of Louisiana, but the tortfeasor’s insurer was
15 | considered a resident of another State. Believing that such suits did “not
16 | come within the spirit or the intent of the basic purpose of the diversity
17 | jurisdiction of the Federal judicial system,” Congress enacted the proviso
18 | “to eliminate under the diversity jurisdiction of the U.S. district courts, suits
19 | on certain tort claims in which both parties are local residents, but which,
20 | under a State ‘direct action’ statute, may be brought directly against a
21 | foreign insurance carrier without joining the local tort-feasor as a
22 | defendant[.]”

16 | *Northbrook Nat. Ins. Co. v. Brewer*, 493 U.S. 6, 9-10 (1989) (internal citations omitted)
17 | (holding that the direct action provision does not apply to actions brought in federal court
18 | by an insurer).

19 | Tilden-Coil does not dispute that it is a California corporation with a principal
20 | place of business in California, nor does it dispute that Landmark is an Oklahoma
21 | corporation with a principal place of business in Georgia. Tilden-Coil contends,
22 | however, that Landmark should be deemed a citizen of Washington because Westec is a

1 citizen of Washington and the Washington action is a “direct action” against an insurer
2 within the meaning of § 1332(c)(1). (Mot. at 3-5.) Tilden-Coil argues that the
3 Washington action is a “direct action” because (1) Tilden-Coil suffered damages
4 attributable to Westec and brought the action against Landmark prior to obtaining a
5 judgment against Westec; and (2) the Washington action seeks to establish that
6 “Landmark is responsible for paying Tilden-Coil’s damages caused by Westec’s actions.”
7 (*Id.* at 5.) As a result, according to Tilden-Coil, removal of the action to federal court is
8 improper. (*Id.* (citing 28 U.S.C. § 1441(b)).)

9 Following *Searles* and *Northbrook*, the court holds that the Washington action is
10 not a “direct action” resulting in Washington citizenship for Landmark. First, the liability
11 Tilden-Coil seeks to impose against Landmark is not of the same nature as the liability
12 Tilden-Coil seeks to impose against Westec. *See Searles*, 998 F.2d at 729. In the
13 Washington action, Tilden-Coil seeks a declaratory judgment that if Westec is found
14 liable to Tilden-Coil in the California action, then the insurance policy that Westec
15 purchased from Landmark will cover that judgment. (Compl. § V.) Put another way,
16 Tilden-Coil seeks to impose duties upon Landmark based on Landmark’s contractual
17 liability to Westec. This cause of action is not one that Tilden-Coil could have brought
18 directly against Westec.

19 Second, Tilden-Coil is not attempting to circumvent the state court system by
20 filing suit directly against an out-of-state insurer rather than against a tortfeasor that
21 shares its citizenship. *See Northbrook*, 493 U.S. at 9-10 (explaining that Congress
22 enacted the “direct action” proviso to defeat plaintiffs’ attempts to *avoid* state court). In

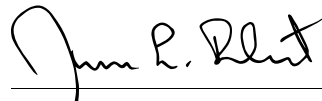
1 fact, quite the opposite is true. Here, Tilden-Coil has sued both the tortfeasor and the
2 insurer in separate actions in state court, and Tilden-Coil seeks to keep both actions in
3 state court. This is not the situation contemplated by Congress when it added the “direct
4 action” proviso to § 1332(c)(1). *See id.*

5 Because the Washington action is not a “direct action” within the meaning of 28
6 U.S.C. § 1332(c)(1), Landmark is not deemed to be a citizen of Washington. As a result,
7 removal of the Washington action is appropriate because there is diversity of citizenship
8 between the parties and no defendant is a citizen of Washington. 28 U.S.C. § 1441(b).

9 III. CONCLUSION

10 For the foregoing reasons, the court DENIES Tilden-Coil’s motion to remand
11 (Dkt. # 3).

12 Dated this 8th day of December, 2009.

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15 JAMES L. ROBART
16 United States District Judge
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