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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES MARYATT and KATHLEEN  
MARYATT, husband and wife,

Plaintiffs,

v.

AMERICAN CASUALTY COMPANY OF  
READING PA; FEDERAL INSURANCE  
COMPANY, a corporation; GRANITE  
STATE INSURANCE COMPANY, a  
corporation; PROTECTIVE NATIONAL  
INSURANCE COMPANY OF OMAHA, a  
corporation; WESTCHESTER FIRE  
INSURANCE COMPANY, a corporation;  
TRAVELERS INDEMNITY COMPANY, a  
corporation,

Defendants.

No. C06-5011RBL

ORDER ON MOTIONS  
TO DISMISS AND  
MOTIONS TO  
TRANSFER

This matter is before the Court on Motions to Dismiss filed in the form of joinders to American Casualty's Motion to Dismiss [Dkt. #7]. Defendants Granite State Insurance Company [Dkt. #38]; Westchester Fire Insurance Company [Dkt. # 23]; Travelers Indemnity Company [Dkts. #26 and 34]; and Federal Insurance Company [Dkt. #27] all join in the portion of American Casualty's Motion arguing that this court does not have subject matter jurisdiction over the litigation because there is no justiciable controversy presented in the Plaintiff's complaint. The remaining defendant, Defendant Protective

1 National, has been dismissed pursuant to a Stipulated Order of Dismissal [Dkt. #50].

2 For the reasons discussed below, and consistent with the Court's prior Order Granting American  
3 Casualty's Motion to Dismiss [Dkt. #51], Defendants' Motions are GRANTED.

## 4 DISCUSSION

### 5 A. Motions to Dismiss.

6 Defendants jointly argue that this Court lacks subject matter jurisdiction over Plaintiffs' claim.  
7 Specifically, they assert that Plaintiffs fail to present a justiciable controversy between themselves and the  
8 insurer Defendants.<sup>1</sup>

9 The Plaintiffs have failed to demonstrate that they are a potentially liable party for environmental  
10 damages at the Washington site. Plaintiffs claim that they are operators of the Washington site; however,  
11 neither of the Plaintiffs has ever been the owner of the Washington site. More importantly, Plaintiffs  
12 (admittedly) have not been the subject of any administrative proceedings, lawsuits, or any request or  
13 demand whatsoever that they investigate or remediate the Washington site. Plaintiffs are not and never  
14 have been responsible for costs associated with environmental damage at the Washington site. Because  
15 Plaintiffs have no potential liability with respect to the Washington site, there is no controversy for this  
16 Court to resolve with respect to liability insurance coverage. *See Asarco, Inc. v. Dep't of Ecology*, 145  
17 Wn.2d 750, 759-760, 43 P.3d 471 (the court lacks subject matter jurisdiction to adjudicate environmental  
18 damages under the MTCA when Ecology has not identified plaintiff as a potentially liable person). This  
19 Court therefore dismisses Plaintiffs' claims against the remaining defendants with respect to the  
20 Washington site, for lack of a justiciable controversy and a corresponding lack of subject matter  
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26 <sup>1</sup>Defendant Granite State also argues that Plaintiffs' claim with respect to the Washington site is barred  
27 by res judicata. Like American Casualty, Granite State negotiated a settlement agreement precluding American  
28 Linen—and Plaintiffs by way of privity—from re-instituting a claim under Granite State's policy until Plaintiffs  
spend \$1 million in cleanup costs. Granite State argues, and Plaintiffs do not dispute, that this condition  
precedent was not met. This Court therefore concludes that for reasons outlined in its prior Order, Plaintiffs'  
claims with respect to Granite State are also barred.

1 jurisdiction.

2 **B. Motions for Change of Venue.**

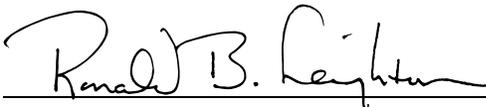
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4 The Defendants jointly move under 28 U.S.C. § 1404(a) to transfer this action to the Federal  
5 District Court for the Northern District of California. They argue that because the California site is the  
6 only site at issue, the action should be transferred there in order to more easily and efficiently access  
7 documents and witnesses associated with the site. For reasons stated in the court's prior Order, this  
8 Motion is GRANTED and the remaining claims, related to the California site, are TRANSFERRED to the  
9 United States District Court for the Northern District of California.

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12 The Court therefore GRANTS Defendants' Motions to Dismiss Plaintiffs' claims regarding the  
13 Washington site, and GRANTS Defendants' Motions to Transfer the remaining action regarding the  
14 California site to the United States District Court for the Northern District of California [Dkts. #7, 38, 23,  
15 26, 27 and 34]. Additionally, Plaintiffs' pending Motion for Summary Judgment [Dkt. #44] is DENIED as  
16 moot.

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18 IT IS SO ORDERED.

19 DATED this 20<sup>th</sup> of March, 2006.

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23 RONALD B. LEIGHTON  
24 UNITED STATES DISTRICT JUDGE