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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiff,

v.

CITY OF CHICO, CALIFORNIA, et al.,

Defendants.

NO. CIV. S-02-442 LKK/DAD

AMENDED ORDER¹

TO BE PUBLISHED

_____ /

Plaintiff, Century Indemnity Company (Century), filed this action after expending funds in connection with the remediation of a hazardous waste site. Century brings claims alleging rights under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq. Century also alleges various state law based claims. This matter comes before the court on defendants' motions to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), and for judgment on the pleadings, pursuant to

¹ The court's December 12, 2003 opinion is amended solely to correct clerical errors prior to publication.

1 Fed. R. Civ. P. 12(c). I decide the motions based on the papers
2 and pleadings filed herein and after oral argument.

3 **I.**

4 **BACKGROUND**

5 This action arises out of a perchloroethylene ("PCE") plume
6 located in the central business district of Chico, California. On
7 February 28, 2002, the California Department of Toxic Substances
8 Control ("DTSC") filed suit against ten individuals and companies
9 seeking to recover its costs in investigating and remediating the
10 PCE-contaminated groundwater in the Central Plume. The defendants,
11 include, inter alia, Noret, Inc. ("Noret") and its two principals,
12 Norville and Janet Weiss ("Weisses"). As is standard practice in
13 multi-party CERCLA cost recovery cases, Noret and the Weisses
14 brought cross-claims against the other parties sued by DTSC,
15 alleging, among other things, contribution under CERCLA section
16 113(f)² and declaratory relief under section 113(g)(2)³. With a
17 few exceptions, each of the other defendants filed similar cross-
18 claims against all of the other defendants.

19 Century, Noret's insurer, filed a separate suit on April 7,
20 2003, against all of the defendants in the DTSC case, except for

21 ² "Any person may seek contribution from any other person
22 who is liable or potentially liable under section 9607(a) of this
23 title, during or following any civil action under section 9606 of
24 this title or under section 9607(a) of this title." 42 U.S.C. §
9613(f).

25 ³ In removal or remedial actions, "the court shall enter
26 a declaratory judgment on liability for response costs or damages
that will be binding on any subsequent . . . actions to recover
further response costs or damages." 42 U.S.C. § 9613(g)(2).

1 Noret and the Weisses, alleging twelve causes of action under
2 CERCLA and California law. Century seeks to impose joint and
3 several liability as an innocent party under CERCLA, subrogation
4 as the insurer of Noret and the Weisses, and contribution. The
5 Court consolidated the DTSC case and the Century case on July 25,
6 2003.

7 The motions for judgement on the pleadings are brought by the
8 City of Chico⁴ and the California Department of Toxic Substances
9 Control (DTSC).⁵ Noret brings the motion to dismiss.⁶

10 **II.**

11 **JOINT & SEVERAL LIABILITY**

12 Century seeks to impose joint and several liability against the
13 defendant PRPs under 42 U.S.C. § 9607. That section provides that
14 owners, operators, arrangers, and transporters are liable for
15 response and remedial costs incurred by the government and "any
16 other person" in remediating a hazardous condition.⁷

17 ⁴ The City of Chico's motion is joined by California
18 Water Service Co., Sunset View Cemetery, and the Peden parties.

19 ⁵ Century argues that DTSC does not have standing to bring
20 the motion since it was not a party in Century's original suit.
21 The court need not address this contention since the California
22 Water Service Co., Sunset View Cemetery, and the Peden parties have
23 joined in the motion.

24 ⁶ Noret's motion is joined by the California Water
25 Service Co. and the City of Chico.

26 ⁷ 42 U.S.C. 9607 (a) provides:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise

1 Century alleges that it has so far spent \$2.8 million in
2 hazardous waste response costs for which it bears no
3 responsibility. It urges that the plain meaning of § 9607's
4 provision, "any other person," means any person who has incurred
5 response or remedial costs, including a liability insurer, and thus
6 it is entitled to bring this suit.

7 The contention is novel. Neither the court, nor any party,
8 has discovered any case in which an insurer of a potentially
9 responsible party (PRP) brought a direct action under CERCLA. Of
10 course, novelty is not an inherent characteristic of error. As it
11 turns out, however, the paucity of litigation is quite explicable,
12 since plaintiff's claim rests on a faulty premise, and the
13 statutory scheme bars such an action.

14 I begin with the false premise. Put directly, Century has not
15 incurred any response costs; rather, it has indemnified Noret for
16 Noret's response costs. Its involvement with the Central Plume
17 Site is exclusively in its capacity as Noret's insurer. Century

18 arranged for disposal or treatment, or arranged with a
19 transporter for transport for disposal or treatment, of
20 hazardous substances owned or possessed by such person, by
21 any other party or entity, at any facility or incineration
22 vessel owned or operated by another party or entity and
23 containing such hazardous substances, and

24 **(4)** any person who accepts or accepted any hazardous
25 substances for transport to disposal or treatment facilities,
26 incineration vessels or sites selected by such person, from
which there is a release, or a threatened release which
causes the incurrence of response costs, of a hazardous
substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the
United States Government or a State or an Indian tribe not
inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any
other person consistent with the national contingency plan.

1 was obligated by the law governing insurance contracts to incur the
2 costs related to the site investigation. Neither CERCLA, nor any
3 other law concerning environmental remediation, determined its
4 obligation to Noret.

5 Century insists that "[r]egardless of the source of [its]
6 obligation to incur costs relating to the site remediation . . .
7 the fact remains that Century, and not Noret, has incurred such
8 costs, and [it therefore] has the superior right under CERCLA
9 . . . to seek recovery of those costs." This so-called plain
10 meaning analysis, however, simply ignores the context of the phrase
11 it relies on, as well as the overall statutory scheme. Canons of
12 construction do not permit such a reading.

13 "It is a fundamental canon of statutory construction, that the
14 words of a statute must be read in their context and with a view
15 to their place in the overall statutory scheme." Turtle Island
16 Restoration Network v. National Marine Fisheries Service, 340 F.3d
17 969 (9th Cir. 2003) (citing Davis v. Michigan Dep't. of Treasury,
18 489 U.S. 803, 809 (1989)); see also Conroy v. Aniskoff, 507 U.S.
19 511, 514 (1993) ("[T]he cardinal rule" is "that a statute is to be
20 read as a whole, since the meaning of statutory language, plain or
21 not, depends on context."). Read within the statutory context, the
22 phrase "any other person" does not include insurers who have no
23 responsibility to engage in remediation by virtue of the statute.
24 The reason for this is straightforward; the statute provides for
25 three different forms of recovery, and Century's rights are
26 provided for under a section other than § 9607.

1 CERCLA allocates the rights and responsibilities of those
2 involved in hazardous waste remediation. Congress created section
3 9607(a) so that "innocent parties - not parties who were themselves
4 liable - [would] be permitted to recoup the whole of their
5 expenditures." United Technologies Corp. v. Browning-Ferris
6 Indus., Inc., 33 F.3d 96, 100 (1st Cir. 1994), cert. denied, 513
7 U.S. 1183 (1995). In § 113(f) (42 U.S.C. § 9613(f)), Congress also
8 provided a right of recovery for parties who are themselves liable
9 for the hazardous waste by expressly allowing a contribution action
10 against other PRPs. Finally, as discussed in detail below,
11 Congress provided for rights of subrogation. This statutory scheme
12 belies Century's contention.

13 Century essentially argues that because it is not responsible
14 for the Plume, but has incurred response costs, it falls within the
15 "innocent party" category and can recover all of its expenses by
16 bringing a § 9607 action. The essential flaw in Century's position
17 is its unwillingness to come to grips with its status, which is not
18 a party (innocent or otherwise) in the CERCLA sense, but an
19 insurer. This distinction and the statute's provision for
20 subrogation rights for insurers demonstrates the flaw in Century's
21 contention.

22 CERCLA allows those who "pay compensation" to another for
23 damages or costs resulting from a release of a hazardous substance
24 to recover those expenses by bringing a subrogation action.

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1 See 42 U.S.C. § 9612(c)(2).⁸ Such actions, of course, are the
2 traditional means by which insurance companies may recoup. Century
3 indemnified its claimant, Noret, for the costs incurred in cleaning
4 up the Plume as a potentially responsible party. Century
5 acknowledges that it can bring a subrogation action as provided in
6 CERCLA, but argues that it may also bring a § 9607 action as a
7 separate and distinct basis for recovery. I cannot agree.

8 While some states, including California, provide that remedies
9 are cumulative, as a general matter federal law does not. When
10 Congress provides for an express remedy, the courts ordinarily
11 cannot impose other remedies nor interpret one provision of a
12 statute providing for recovery so that another provision has no
13 application. See United States v. Northrop Corp., 59 F.3d 953 (9th
14 Cir. 1995); Wilshire Westwood Assoc. v. Atlantic Richfield, 881
15 F.2d 801 (9th Cir. 1989) (rejecting plaintiff's plain language
16 interpretation that certain substances were not considered
17 hazardous because such an interpretation would run contrary to
18 another CERCLA provision). Century's construction violates both
19 principles. As I explain below, if insurers could sue pursuant to
20 § 9607, CERCLA's subrogation provision would be rendered nugatory.
21 A brief review of basic subrogation law explains why.

22 ⁸ "Any person, including the Fund, who pays compensation
23 pursuant to this chapter to any claimant for damages or costs
24 resulting from a release of a hazardous substance shall be
25 subrogated to all rights, claims, and causes of action for such
26 damages and costs of removal that the claimant has under this
chapter or any other law."

26 42 U.S.C. § 9612(c)(2).

1 Subrogation is "among the oldest of [equitable] doctrines."
2 American Surety Co. of New York v. Bethlehem Nat. Bank of
3 Bethlehem, 62 S.Ct. 226 (1941). It is "the substitution of one
4 party in place of another with reference to a lawful claim . . .
5 [and] is [therefore] a derivative right." In re Hamada, 291 F.3d
6 645 (9th Cir. 2002). Thus, Century, as an insurer, will be able
7 to bring a subrogation action against third-party PRPs who are
8 legally responsible to its insured in order to recover the loss it
9 paid. Barnes v. Indep. Auto. Dealers Ass'n of Cal. Health and
10 Welfare Plan, 64 F.3d 1389 (9th Cir. 1995). The extent of the
11 remedy available, however, is limited to that available to the
12 insured. A "subrogee's right of action is *not* independent and
13 separate, but is equal to and limited by the right of action
14 possessed by its insured; the subrogee simply stands in the stead
15 of the original claimant and is subject to all [claims and]
16 defenses which could have been asserted against that party." Smith
17 v. Parks Manor, 197 Cal.App.3d 872, 881 (1987); see also Taisho
18 Marine & Fire Insurance Co., Ltd. v. M/V Sea-Land Endurance, 815
19 F.2d 1270, 1274 (9th Cir. 1987); Patent Scaffolding Co. v. William
20 Simpson Constr. Co., 256 Cal.App.2d 506 (1967). Thus, under a
21 subrogation action, Century steps into the shoes of its insured,
22 Noret, a PRP.

23 In this Circuit, a PRP cannot bring a § 9607(a) action to hold
24 other PRPs jointly and severally liable. Pinal Creek Group v.
25 Newmont Mining Corp., 118 F.3d 1298 (9th Cir. 1997), cert. denied,
26 524 U.S. 937 (1998). It thus follows, that in a subrogation

1 action, Century cannot divorce itself from its insured's status as
2 a PRP, and being limited to Noret's rights and claims, cannot
3 impose joint and several liability on the other PRP's. If Century
4 were allowed to bring a § 9607(a) action, however, it would not be
5 limited to whatever rights Noret has, but would be able to hold
6 other PRPs jointly and severally strictly liable for its
7 indemnification costs. It follows that if the subrogation and
8 section 9607(a) actions were interpreted as cumulative remedies,
9 liability insurers would always seek recovery pursuant to
10 § 9607(a), thereby nullifying CERCLA's subrogation provision.

11 Nor is this the only provision of CERCLA that is incompatible
12 with Century's argument. Century's § 9607(a) action would also
13 frustrate CERCLA's provisions concerning contribution among PRPs.
14 Section 9613(f) permits a PRP to seek contribution from others who
15 are potentially liable under § 9607(a), and requires equitable
16 apportionment of the total hazardous waste response costs among the
17 PRPs. Thus, a PRP who pays response costs can sue to recover those
18 expenses paid in excess of its own liability by spreading the costs
19 to other PRPs. Since such a suit is a claim for contribution, a PRP
20 can never recover all of its expenses. If the PRP's liability
21 insurer were allowed to bring a § 9607 action against other PRPs,
22 and hold them jointly and severally liable for its response costs,
23 a PRP could recoup all of its expenditures regardless of fault. See
24 New Castle County v. Halliburton NUS Corp., 111 F.3d 1116 (3d Cir.
25 1997). As noted, such a result is inconsistent with the statutory
26 scheme. Pinal Creek, 118 F.3d at 1306 ("[U]nder CERCLA, a PRP does

1 not have a claim for the recovery of the totality of its cleanup
2 costs against other PRPs, and a PRP cannot assert a claim against
3 other PRPs for joint and several liability."); Fireman's Fund Ins.
4 Co. v. City of Lodi, Cal., 302 F.3d 928, 945 (9th Cir. 2002)
5 ("CERCLA §107 and CERCLA §113 provide different remedies: a
6 defendant in a §107 cost-recovery action may be *jointly and*
7 *severally liable* for the total response cost incurred to cleanup
8 a site, whereas a defendant in a §113(f) contribution action is
9 *liable only for his or her pro rata share* of the total response
10 costs incurred to cleanup a site.") (emphasis in original), cert.
11 denied, 123 S. Ct. 1754 (2003).

12 Yet another reason, inherent in the statutory scheme, bars
13 Century's claim. In Pinal Creek, the Ninth Circuit explained that
14 if defendant PRPs were held jointly and severally liable "by a
15 claimant PRP, reduced by the amount of claimant PRP's own share,
16 those defendant PRPs would end up absorbing all of the cost
17 attributable to 'orphan shares.'" 118 F.3d 1298, 1303 (9th Cir.
18 1997). CERCLA does not support a rule "which would immunize the
19 claimant PRP from the risk of orphan-share liability and would
20 restrict substantially the ability of courts to apportion costs
21 equitably pursuant to section 113(f)." Id.

22 Having demonstrated that, when read in context, Century's suit
23 must fail, I briefly pause to note that its suit would also
24 frustrate one of Congress' purposes in enacting the statute.

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1 One of the core purposes of CERCLA is to foster settlement
2 through its system of incentives and without unnecessarily further
3 complicating already complicated litigation. See Commonwealth
4 Edison Co. v. United States, 271 F.3d 1327, 1350-51 (Fed. Cir.
5 2001), cert. denied, 535 U.S. 1096 (2002) ("CERCLA is a strict
6 liability statute, one of the purposes of which is to shift the
7 cost of cleaning up environmental harm from the taxpayers to the
8 parties who benefitted from the disposal of the wastes that caused
9 the harm."); In re Cuyahoga Equipment Corp., 980 F.2d 110, 119 (2d
10 Cir. 1992) ("Congress sought through CERCLA to . . . encourage
11 settlements that would reduce the inefficient expenditure of public
12 funds on lengthy litigation."); see also United States v. Dravo
13 Corp., No. 8:01-CV-500, 2002 WL 1832274, *3 (D. Neb. 2002) ("Thus,
14 the court's goal in a CERCLA action is twofold: to promote
15 efficiency in cleanup of sites where hazardous waste is detected,
16 and to promote efficiency in the settlement of the civil action
17 relating to the costs of the cleanup.").

18 Of course, nothing in CERCLA prevents PRPs from insuring
19 against claims under the statute. Allowing such insurers a § 9607
20 claim, however, adds yet another layer of parties and issues to the
21 litigation, thus complicating the litigation. Moreover, to
22 encourage settlement, "Congress employed incentives for potentially
23 responsible parties to settle and strong disincentives for non-
24 settling potentially responsible parties." Bedford Affiliates v.
25 Sills, 156 F.3d 416, 427 (2d Cir. 1998). As I now explain,
26 allowing Century's § 9607 claim would undermine the settlement

1 incentives.

2 In a contribution suit, each PRP will be liable to Noret only
3 for that PRP's equitable share of Noret's costs. If a PRP settles
4 with DTSC in a court-approved settlement, it will be released from
5 any contribution claims Noret might assert. If Century is allowed
6 to maintain its action, however, each PRP would potentially be
7 liable to Century for the entire \$2.8 million which it claims.
8 Moreover, it is not clear whether settling with DTSC would protect
9 a PRP from Century's joint and several claim.⁹ With the threat of
10 Century's \$2.8 million claim, even if it settles with DTSC, a
11 defendant PRP is less likely to settle with DTSC and more likely
12 to continue litigating the case. As has been said:

13 If a party could end run § 113(f)(2) and (3) by suing a
14 settling party under § 107(a)(4)(B) for "costs of
15 response," the settlement scheme would be bypassed. The
16 incentive to early settlement would disappear, and the
17 extent of litigation involved in a CERCLA case would
increase dramatically. Consent agreements would no
longer provide protection, and settling parties would
have to endure additional rounds of litigation to
apportion their losses.

18 In re Reading Co., 115 F.3d 1111, 1119 (3d Cir. 1997).

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20 ⁹ Even if a party settles with DTSC, the "contribution
21 protection" of section 113(f)(2) might not prevent Century
22 from continuing to pursue its \$2.8 million claim against it,
because a court might interpret that section as barring only
23 section 113(f) contribution suits. See Rumpke of Indiana,
Inc. v. Cummins Engine Co., Inc., 107 F.3d 1235, 1242 (7th
24 Cir. 1997) (holding that the contribution bar of section
113(f)(2) has no "role to play in a direct cost recovery
25 action under § 107(a)"); Centerior Serv. Co. v. Acme Scrap
Iron & Metal Corp., 153 F.3d 344, 352 n.11 (6th Cir. 1998)
26 (interpreting section 113(f)(2) to bar only contribution
suits, not joint and several claims).

1 determination of the applicable law, here, whether Century's
2 subrogation rights are governed by state or federal law.¹³
3 Happily, I need not resolve the issue, since both federal and
4 California law follow the "made whole" doctrine. Thus, as I now
5 explain, under either law, Century's suit is premature.

6 **A. "MADE WHOLE" DOCTRINE**

7 Federal common law requires that, absent an agreement to the
8 contrary, an insurance company may not enforce a right to
9 subrogation until the insured has been fully compensated, that is,
10 has been made whole. Barnes, 64 F.3d at 1394; Copeland Oaks v.
11 Haupt, 209 F.3d 811 (6th Cir. 2000). California law also holds
12 that a subrogation action is not ripe where the insurer has paid
13 only a portion of the debt owed to the insured. Sapiano v.
14 Williamsburg Nat. Ins. Co., 28 Cal.App.4th 533, 536 (1994) (citing
15 2 Cal. Insurance Law & Practice § 35.11[4][b], p. 35-47, fns.
16 omitted (1988 rev.)). Under California law, the "made whole" rule
17 applies to both equitable and contractual subrogation, unless the
18 insurance policy contains a subrogation provision clearly holding

19 to an indemnification or any other agreement. Section
20 9607(e)(2) clarifies that (e)(1) does not bar a person
21 liable under CERCLA or a guarantor from bringing subrogation
22 actions. A statutory section that reserves and does not bar
23 a subrogation action does not in and of itself create the
24 right of action. Section 9607(e)(2) simply "ensures that
25 section 107(e)(1) will not be interpreted to abrogate
26 contractual agreements," such as insurance policies. Niecko
v. Emro Marketing Co., 769 F.Supp. 973, 989 (E.D. Mich.
1991).

¹³ Section 9612(c)(2) allows for subrogation, but it does not specify what body of law governs the action, and there is negligible guidance on this issue.

1 otherwise. Sapiano, 28 Cal.App.4th at 537.

2 Thus, Century's ability to exercise its right to subrogation
3 under § 9612(c) depends on whether that claim is ripe. It is clear
4 that the suit is not ripe.

5 Throughout its papers and at oral argument, Century argued
6 that its action is timely because it has already incurred \$2.8
7 million dollars in CERCLA response costs. It does not contend that
8 the sum paid are Noret's total response costs under CERCLA and that
9 Noret has been fully compensated for its losses. To the contrary,
10 Century asserts that it may recover the payments it has made to
11 date as a kind of first "installment" of the potentially
12 significant future expenses that it might incur. Given the "made
13 whole" rule, Century cannot maintain its suit. See Barnes, 64 F.3d
14 at 1394; Sapiano, 28 Cal.App.4th at 536.¹⁴

15 **B. RESERVATION OF RIGHTS**

16 Century, while defending Noret, has reserved the issue of
17 coverage.¹⁵ Even if the "made whole" rule did not bar Century's
18 suit, the fact that it has reserved its right to contest coverage
19 would preclude it. An insurer's ultimate liability is contingent
20 on the coverage issue. Travelers Indem. Co. v. Dingwell, 844 F.2d
21 629, 638 (1st Cir. 1989). It is established "that an insurer who

22 ¹⁴ No claim is made that Century's insurance policy
23 agreement with Noret contains a provision allowing for early
24 suit.

25 ¹⁵ Noret and Century have a liability coverage action
26 pending in the Butte County Superior Court in which Century
stipulated to pay for Noret's defense costs, but reserved
its right to deny coverage.

1 reserves the right to deny coverage cannot control the defense of
2 a lawsuit brought against its insured by an injured party." Id.
3 at 638. Allowing the insurer to participate in the underlying
4 suit, however, could interfere with and unfairly restrict the
5 insured's defense. If Century is allowed to pursue its subrogation
6 claim, its defense strategy will not only consist of reducing
7 Noret's share of total response costs, but could, and likely would,
8 include strategies to reduce its own obligation to indemnify Noret
9 under its coverage policies. Under such circumstances, the parties
10 may encounter discovery and settlement conflicts with other PRPs,
11 resulting in prolonged litigation, again frustrating Congressional
12 intent to encourage quick settlements and remove the burden for
13 environmental cleanup costs away from taxpayers and onto the PRPs.

14 **C. REAL PARTY IN INTEREST**

15 Century seeks to circumvent the limitations on subrogation
16 actions by arguing that it is the real party in interest because
17 it, not Noret, has partially paid for 'response costs' and must
18 therefore be allowed to bring the CERCLA claims as the subrogee.
19 Even assuming, arguendo, that Century could be recognized as a
20 partial subrogee in a CERCLA action, the Ninth Circuit has
21 concluded that "[u]nder federal law, a partial subrogor is a real
22 party in interest as to the entire claim only when the subrogor is
23 entitled to enforce the entire claim and payment to the subrogor
24 will completely extinguish the defendant's liability." Glacier
25 General Assurance Co. v. G. Gordon Symons Co., 631 F.2d 131, 134

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1 (9th Cir. 1980).¹⁶ If, as a result of Noret's contribution action,
2 it is found that the response costs paid by Century are more than
3 Noret's equitable share of total response costs, then Century will
4 be subrogated to Noret's claims to recover that excess amount.
5 Under these circumstances, Century's argument that it is the real
6 party in interest fails.

7 **IV.**

8 **CONTRIBUTION**

9 Century also sues the defendant PRPs for contribution under
10 section 9613(f). While Noret may bring a contribution action
11 against the other defendant PRPs, and has done so, for all the same
12 reasons noted above, Century's contribution claim also fails.
13 Century may not bring its own independent contribution claim
14 because it is not itself a PRP. Century may not exercise its
15 subrogee's rights until the total amount of response costs for
16 which Noret is responsible is determined through the contribution
17 action and until it has been fully compensated for its losses.
18 Century's claim for contribution must also be dismissed.

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22 ¹⁶ In Glacier General Assurance Co., a plaintiff who was
23 partially indemnified for its costs by its insurers sought
24 to recoup its total losses from the defendants and the
25 insurers sought to intervene as the real parties in
26 interest. The court found that even though the plaintiff
was partially compensated for its losses, it could collect
the entire loss from the defendants and the insurance
companies were not necessary parties. Id. at 134-135.

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V.

SUPPLEMENTAL JURISDICTION

This court may exercise supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. § 1367 if it has original jurisdiction.¹⁷ Given that the head of federal jurisdiction has been lost, Century's remaining state claims will also be dismissed. See 28 U.S.C. § 1367(c).

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¹⁷ The statute provides in pertinent part:

(a) . . . in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--
(1) the claim raises a novel or complex issue of State law,
(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or
(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367.

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VI.

ORDER

For the foregoing reasons, the court hereby ORDERS that defendants City of Chico, California Water Service Company, Sunset View Cemetery, Noret and Pedens' motions to dismiss and for judgment on the pleadings are GRANTED.

IT IS SO ORDERED.

DATED: January 8, 2004.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT