

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

Gull Industries, Inc. v. Granite State Insurance Company

Gull Industries · No. C25-1923JLR · Decided January 26, 2026

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE 9 10 GULL INDUSTRIES, INC., CASE NO. C25-1923JLR 11 Plaintiff, ORDER
v. 12 GRANITE STATE INSURANCE 13 COMPANY, 14 Defendant. 15 I. INTRODUCTION 16
Before the court is Defendant and Counter-Plaintiff Granite State Insurance 17 Company's
("Granite State") motion to dismiss Plaintiff and Counter-Defendant Gull 18 Industries, Inc.'s
("Gull") complaint.

(MTD (Dkt. # 10); Reply (Dkt. # 15); see also 19 Compl. (Dkt. # 1).) Gull opposes the motion.
(Resp. (Dkt. # 13).) The court has 20 21 22 1 considered the parties' submissions, the relevant
portions of the record, and the governing 2 law. Being fully advised,¹ the court GRANTS Granite
State's motion. 3 II. BACKGROUND 4 This case arises from Granite State's refusal to defend
and indemnify Gull in 5 litigation that alleged that Gull's prior operation of one gas station located
in Port 6 Orchard, Washington, (hereafter "Station 260") caused groundwater contamination 7
during at least one Granite State policy period.

(Compl. ¶ 1.) Granite State issued Gull 8 three excess insurance policies providing continuous
coverage between October 1, 1980, 9 and October 1, 1983. (See id. ¶¶ 9-10 (setting forth the
details of the policies and their 10 respective coverage dates and policy limits).) 11 A. 2011
Declaratory Judgment Action 12 In December 2011, Gull filed an action in King County Superior
Court (the 13 "Superior Court") against Granite State and other insurers seeking, in pertinent part,
a 14 declaratory judgment as to each insurer's "obligations to remediate environmental 15
pollution" at 220 of Gull's former gas stations, including Station 260.

(Id. ¶ 12.) Gull 16 also brought breach of contract claims against the insurers and sought damages.
(See 17 Laveson Decl. (Dkt. # 11) ¶ 6, Ex. 5 (2011 Superior Court Compl.); see also id. ¶ 7, Ex. 6
18 (2011 Superior Court FAC).²) 19 20 1 Granite State requests oral argument and Gull does not.
(See MTD at 1; Resp.)

The court concludes that oral argument is not necessary to decide the motion. See Local Rules
W.D. Wash. LCR 7(b)(4). 21 2 The court agrees with Granite State that the public records listed in
the declaration of Jeffrey D. Laveson are incorporated by reference. (See Laveson Decl.); see
Knievel v. ESPN, 22 393 F.3d 1068, 1076 (9th Cir. 2005). 1 The Superior Court ultimately
dismissed both of Gull's claims against Granite 2 State: (1) in 2015, the court dismissed Gull's

breach of contract claim without prejudice 3 (see Laveson Decl. ¶ 8, Ex. 7 (2015 Order Granting MSJ)); and (2) in 2016, the court 4 dismissed Gull’s claim for declaratory relief with prejudice – a decision that was upheld 5 on appeal, (Compl. ¶ 13; see also Laveson Decl. ¶ 1, Ex. 1 (2016 Superior Court 6 Order)); see also *Gull Indus., Inc. v. Granite State Ins.*

Co., 493 P.3d 1183 (Wash. Ct. 7 App. 2021); rev. denied, 506 P.3d 646 (Wash. 2022). Subject to the Owned Property 8 Exclusion (“OPE”)—a standard liability insurance provision that bars coverage for 9 damage to property owned by the insured and limits coverage to third-party property 10 damage—Granite State moved for summary judgment on Gull’s coverage claim, in 11 pertinent part, because Gull admitted that, after five years of litigation, it had no evidence 12 of third-party property damage (i.e. no groundwater contamination) at 106 sites, 13 including Station 260.

(See Laveson Decl., ¶ 15, Ex. 14 (“OPE MSJ”) at 13-14; id., ¶ 16, 14 Ex. 15 (“OPE MSJ Reply”)); see also *Gull Indus.*, 493 P.3d at 1189 (Granite State 15 “argued that the OPE sites should be dismissed because (1) there was no evidence of 16 contamination or (2) the contamination was limited to soil.”). Granite State represents in 17 its motion for summary judgement that, of the 106 sites, (1) soil sample testing confirmed 18 that there was no evidence of third-party property damage for 30 sites, (see OPE MSJ at 19 13-14); and (2) “there is no evidence Gull has been able to locate, after a diligent search, 20 off-property contamination or soil and/or groundwater contamination above state 21 regulatory levels set under [the Model Toxic Control Act (“MTCA”)][,]” for 76 of the 22 1 106 sites, including Station 260 (collectively, the “Admitted No Evidence” sites) (see id. 2 at 14 (citing correspondence with Gull’s counsel)).

3 In the motion for summary judgment, Granite State argued that 4 Gull’s admissions (in its disclosures) and the documents produced provide no evidence of off-site contamination at the OPE Sites. Under [Granite 5 States’] Policies, the property damage and/or accident or loss must take place during the policy period. Where, as here, [Granite States’] Policies expired 6 over 30 years ago, even if – at some point in the speculative future – off-site contamination does occur, there still can be no coverage under the policies 7 since such damage and/or accident or loss cannot have taken place during the [Granite States’] Policies’ periods.

8 (OPE MSJ at 22.) 9 In response, Gull agreed that the Superior Court should dismiss its claims against 10 those sites for which it had no evidence of third-party property damage, and argued that 11 such dismissal should be without prejudice so that “if in the future the State or a third- 12 party makes a clean-up claim relating to releases during the policy period at issue, Gull 13 should be free to make a new claim.” (Laveson Decl., ¶ 17, Ex. 16 (“Gull Opposition to 14 SJ”) at 2.)

Gull separately sought leave to file a fourth amended complaint to voluntarily 15 dismiss the Admitted No Evidence sites from the litigation. (See Laveson Decl., ¶ 11, 16 Ex. 10 (Mot. for 4th Am. Compl.) at 1-2; id., ¶ 12, Ex. 12 (Reply to 4th Am. Compl.).) 17 Although the trial court

granted Gull leave to file a fourth amended complaint, it denied 18 Gull’s request for dismissal of the Admitted No Evidence sites without prejudice.

(See 19 Laveson Decl., ¶ 14, Ex. 13 (2017 Superior Court Order at 2.) Specifically, the Superior 20 Court set forth: 21 The court finds that dismissal of these sites, at this stage of litigation would 22 unduly prejudice defendants.

The investment of time, money and resources 1 into defending against these claims—some five years after this lawsuit was filed— would be completely wasted if dismissed now. 2 (Id.) 3 Consequently, in granting summary judgment for Granite State, the Superior Court 4 held: 5 1. [Gull’s] claims for coverage with respect to [the OPE sites] are dismissed 6 with prejudice[;]
2. There has been no showing of third party property damages at any of the 7 OPE sites[;][and]
3. There is no “imminent threat” to third party property damage at any of the 8 OPE sites[.]

9 (2016 Superior Court Order at 3.) 10 B. 2023 Port Orchard Lawsuit 11 On April 7, 2023, the current owner of Station 260 sued Gull in Kitsap County 12 Superior Court under Washington’s MTCA (the “Port Orchard Lawsuit”). (Compl. ¶ 14.) 13 Gull represents that the Port Orchard Lawsuit alleges that Gull is liable for the costs to 14 clean up fuel leaks that spread from underground tanks and pipes at Station 260 during 15 the Granite State policy periods.

(Id. ¶ 15.) In May 2024, Gull tendered its claim for 16 defense and indemnity in the Port Orchard Lawsuit to Granite State. (Id. ¶ 16.) Granite 17 State, however, denied the tender on June 21, 2024, citing the 2016 judgment entered in 18 the 2011 Superior Court case. (Id. ¶ 17.)

On August 29, 2025, the Kitsap County 19 Superior Court granted summary judgment against Gull on MTCA liability. (Id. ¶ 18.) 20 Gull contends that, in denying its tender, Granite State improperly ignored that neither 21 the 2016 judgment in the 2011 Superior Court case nor the Court of Appeals order 22 affirming that judgment “cancelled Gull’s insurance contracts with Granite State, or 1 Granite State’s future obligations under those contracts, including Granite State’s 2 obligation to defend and indemnify Gull in future lawsuits.” (Id. ¶ 19.)

3 C. The Instant Case 4 On October 3, 2025, Gull filed the instant complaint bringing claims against 5 Granite State for breach of contract, bad faith, breach of the duty of good faith and fair 6 dealing, and violation of Washington’s Consumer Protection Act (“CPA”), RCW 7 19.86.090. (Id. ¶¶ 20-26.) Gull seeks damages, interest, and attorneys’ fees and costs.

8 (Id. ¶ 28.) On October 31, 2025, Granite State answered Gull’s complaint and filed a 9 counterclaim seeking attorneys’ fees and expenses for opposing Gull’s purportedly 10 frivolous action. (Defs. Ans. (Dkt. # 9).)

On November 6, 2025, Granite State moved to 11 dismiss Gull’s complaint. (MTD.) Granite State’s motion is now fully briefed and ripe 12 for decision. 13 III. ANALYSIS 14 The court first

sets forth the applicable legal standard and then considers each of the parties' arguments in turn. A. The Applicable Legal Standard Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint "fail[s] to state a claim upon which relief can be granted[.]" Fed.

R. Civ. P. 12(b)(6); see also Fed R. Civ. P. 8(a)(2) (requiring that the plaintiff to provide "a short and plain statement of the claim showing that the pleader is entitled to relief"). Under this standard, the court construes the allegations in the complaint in the light most favorable to the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 1940, 946 (9th Cir.

2005), and asks whether the claim contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 356 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

The court "is to take all well-pleaded factual allegations as true and to draw all reasonable inferences therefrom in favor of the plaintiff." *Wylar Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 663 (9th Cir. 1998) (citation omitted). B. Granite State's Motion to Dismiss Granite State seeks dismissal of this coverage action based on the doctrine of res judicata and application of the Full Faith and Credit Act to a 2011 declaratory judgment action for environmental liability.

(See MTD at 2.) Gull argues that res judicata does not preclude Gull from tendering the Port Orchard Lawsuit to Granite State because its 2011 breach of contract claim was dismissed without prejudice. (See Resp. at 1.)

The court agrees with Granite State. 1. Gull's claims are barred by the doctrine of claim preclusion. "Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (emphasis added).

Federal Courts "determine the preclusive effect of a state court judgment by applying that state's preclusion principles." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 760 (9th Cir. 2014) (citing the Full Faith and Credit Act, 28 U.S.C. § 1738).

Because a Washington court decided the Superior Court action, Washington's claim preclusion law governs. Under Washington law, "claim preclusion [] applies where a final judgment previously entered and a present action are so similar that the current claim should have been litigated in the former action." *Storti v. Univ. of Washington*, 330 P.3d 159, 165 (Wash.

2014); see *Ensley v. Pitcher*, 222 P.3d 99, 102 (Wash. Ct. App. 2009) (stating that 8 Washington claim preclusion law prohibits claim splitting, which occurs when a party 9 files separate lawsuits with different claims but based on the same events); see also *Hisle 10 v. Todd Pac. Shipyards Corp.*, 93 P.3d 108, 114 (Wash. 2004) (“*Res judicata* is the rule, 11 not the exception[.]”) (emphasis added).

The threshold requirement for invoking claim 12 preclusion is a final judgment on the merits. *Karlberg v. Otten*, 280 P.3d 1123, 1130 13 (Wash. Ct. App. 2012). A party seeking to invoke *res judicata* must establish “a 14 concurrence of identity... of (1) subject matter; (2) cause of action; (3) persons and 15 parties; and (4) the quality of the persons for or against whom the claim is made” 16 between the prior judgment and a subsequent action.

Schroeder v. Excelsior Mgmt. Grp., 17 LLC, 297 P.3d 677, 684 (Wash. 2013) (internal quotation marks omitted) (quoting *Mellor 18 v. Chamberlin*, 673 P.2d 610 (Wash. 1983)). 19 Applying this standard, the court concludes that Gull’s claims are barred by the 20 doctrine of claim preclusion.

First, the threshold requirement for application of claim 21 preclusion is satisfied because the Superior Court granted Defendant’s motion for partial 22 summary judgment and dismissed the action with prejudice. (See 2016 Superior Court 1 Order.) It is axiomatic that a dismissal with prejudice constitutes a final judgment on the 2 merits. See *Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n.3 (1981); *Save 3 Bull Trout v. Williams*, 51 F.4th 1101, 1109 (9th Cir.

2022); *Krikava v. Webber*, 716 P.2d 4 916, 918 (Wash. Ct. App. 1986). 5 Second, both actions involve the same subject matter: ground water contamination 6 at Station 260, excess insurance policies, assignments of rights, coverage issues, 7 questions of environmental liability, and affirmative defenses. (Compare 2011 Superior 8 Court FAC ¶¶ 9-44; with Compl. ¶¶ 8-26.)

Third, the parties in this suit are named, in the 9 same capacity, in both suits. (Compare 2011 Superior Court FAC, with Compl.) Fourth, 10 the quality of the persons and parties are, consequently, the same because each party has 11 “acted in its own capacity against [the other] and sought to advance and protect its own 12 interests in both lawsuits.” *Berschauer Phillips Const.*

Co. v. Mut. of Enumclaw Ins. Co., 13 308 P.3d 681, 685 (Wash. Ct. App. 2013). 14 Finally, Gull’s coverage claims and the facts underlying those claims are either 15 exactly the same or sufficiently identical to constitute the same causes of action under 16 Washington’s claim preclusion law. See *Deja Vu-Everett-Fed. Way, Inc. v. City of Fed. 17 Way*, 979 P.2d 464, 468 (Wash.

Ct. App. 1999) (listing factors relevant to determining 18 whether causes of action are the same and stating that whether the causes of action “arise 19 out of the same transactional nucleus of facts” is most important). Namely Gull’s 2011 20 declaratory judgment action, (1) dealt with

substantially the same evidence; (2) revolved 21 around whether Gull's operation of Station 260 caused groundwater contamination 22 1 during the Granite State policy period; and (3) arose from the same nucleus of facts.

2 (Compare Compl. ¶¶ 8-19; with 2011 Superior Court FAC ¶¶ 1, 7, 9-12.) 3 Specifically, in the 2011 Superior Court case, Gull alleged that it has: 4 incurred, and will continue to incur, liability for third-party property damage allegedly sustained to the soil and groundwater as a result of historical 5 operations, and resulting environmental contamination, at over 140 properties at which Gull... conducted fueling or fueling-related 6 operations[.]

7 (2011 Superior Court FAC ¶ 9.) Meanwhile, in the instant matter, Gull asserts that: 8 The Port Orchard Lawsuit alleges Gull is liable for the costs to clean up fuel leaks that spread from its underground tanks and pipes during the Granite 9 State policy periods. 10 Compl. ¶ 15. 11 Moreover, Gull seeks damages, interest, and attorneys' fees in both the Port 12 Orchard Lawsuit and in the 2011 state court proceedings.

(Compare Compl. ¶ 28; with 13 2011 Superior Court FAC ¶¶ 45-49.) Gull argues that the court should deny Granite 14 State's motion because the Superior Court dismissed its 2011 breach of contract claim 15 without prejudice. (See, e.g., Resp. at 1-2.)

The operative claim, however, need only be 16 "sufficiently identical to constitute the same causes of action under Washington's claim 17 preclusion law" to be precluded under the doctrine of res judicata. See *Capstick v. Bank 18 of New York Mellon*, No. C23-0936JLR, 2023 WL 5277685, at *4 (W.D. Wash. Aug. 16, 19 2024) (citing *Deja Vu-Everett-Federal Way, Inc.*, 979 P.2d at 468).

The court declines 20 21 22 1 to deny the motion on those grounds. Therefore, the court concludes that the doctrine of 2 claim preclusion bars Gull's claims.3 3 2. The court denies leave to amend. 4 Under Federal Rule of Civil Procedure 15(a), district courts are ordinarily to 5 "freely give" leave to amend a claim subject to dismissal. Fed. R. Civ. P. 6 15(a)(2).

Leave to amend is not required, however, where amendment would be futile, 7 such as when the pleading could not possibly be cured by further factual 8 allegations. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Ebner v. Fresh, Inc.*, 838 F.3d 9 958, 968 (9th Cir. 2016). 10 Because Gull's claims are barred by the doctrine of claim preclusion, the court 11 concludes that further amendment would be futile.

Therefore, the court denies leave to 12 amend. 13 IV. CONCLUSION 14 Consequently, the court grants Granite State's motion to dismiss (Dkt. # 10). The 15 court DISMISSES Gull's complaint and this action with prejudice. 16 17 Dated this 2 6th day of January, 2026. A 18 JAMES L. ROBERT 19 United States District Judge 20 21 3 Because the court concludes that Gull's claims are barred by the doctrine of claim 22 preclusion, it need not address the parties' remaining arguments.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-western-district-of-was/2026/gull-industries-inc-v-granite-state-insurance-company-zcq1qwko>