

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 03 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHEIK ZAHID ALI; SAFIYA ZAYNA
ALI,

Plaintiffs - Appellants,

v.

TRIMAC TRANSPORTATION
SERVICES (WESTERN), INC.; ROHM
& HAAS COMPANY,

Defendants - Appellees.

No. 09-15401

D.C. No. 3:07-cv-04263-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Argued and Submitted February 15, 2011
San Francisco, California

Before: SCHROEDER and THOMAS, Circuit Judges, and BENNETT, District
Judge.**

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Mark W. Bennett, District Judge for the United States
District Court for the Northern District of Iowa, sitting by designation.

The plaintiffs, Sheik Zahid Ali and Safiya Zayna Ali, appeal the district court's dismissal of their claim against defendant, Trimac Transportation Services, Inc. The court dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedures 12(b)(1).

The district court had subject matter jurisdiction, however, because the claim falls within the district court's diversity jurisdiction. 28 U.S.C. § 1332(a)(1); *see also Begay v. Kerr-McGee Corp.*, 682 F.2d 1311, 1315–16 (9th Cir. 1982).

Under California's workers' compensation law, an injured employee can pursue a claim in state court if the employer has not secured adequate workers' compensation insurance. Cal. Lab. Code § 3706; *see also Le Parc Cmty. Ass'n v. Workers' Comp. Appeals Bd.*, 110 Cal. App. 4th 1161, 1172 (2003). The district court found that the employer had provided the requisite workers' compensation insurance, relying principally upon the pleadings and the declarations attached to the motion to dismiss. The parties on appeal dispute the nature of the defendant's insurance coverage and also dispute the employment status of Ali. There has been no discovery and no opportunity to develop adequately the record in support of a summary judgment motion. On the basis of the sparse record before this court, we are not in a position to resolve those issues.

We therefore **VACATE** the district court's judgment of dismissal and **REMAND** for further proceedings.