

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUMBERMENS MUTUAL CASUALTY :  
CO., : CIVIL ACTION  
Plaintiff :  
v. :  
A. BASSANER MOVING & STORAGE, :  
et al., :  
Defendants NO. 01-5237

ORDER AND MEMORANDUM

AND NOW, this 1<sup>\*</sup> day of June, 2002, upon  
consideration of the Motion by Defendant Alan Berson to Dismiss  
Plaintiff's Complaint Pursuant to F.R.C.P. 12(b) (1) for Lack of  
Subject Matter Jurisdiction (Docket No. 2), the plaintiff's  
response thereto, and following oral argument on the motion, IT  
IS HEREBY ORDERED that the motion is GRANTED for the reasons set  
forth below.

Plaintiff Lumbermens Mutual Casualty Company  
("Lumbermens") is an Illinois corporation with its principal  
place of business in Illinois. Lumbermens is in the business of  
issuing and/or underwriting contracts of insurance to  
policyholders and insureds.

Defendant A. Bassaner Moving & Storage, A. Bassaner,  
Ltd. d/b/a A. Bassaner Moving and Storage Co., Guess Who's

Moving, Arrow Moving & Storage, Ltd., and A&B Moving & Storage Co., Inc. (collectively "Bassaner Moving") is a Pennsylvania corporation with its principal place of business in Pennsylvania. Bassaner Moving is in the business of providing moving and storage services.

Defendants Anthony Bassaner, Andrew Bassaner, Laura Bassaner, and Martin Brill are individual defendants affiliated with Bassaner Moving (the "Bassaner Defendants"), and are all Pennsylvania citizens.

Defendant Alan Berson, and defendants Steven and Linda Kerner are also Pennsylvania citizens. Each was a customer of Bassaner Moving.

Lumbermens issued to Bassaner Moving an insurance policy, effective from December 1, 1998 to December 1, 1999. The policy included two forms that covered Bassaner Moving for legal liability, subject to certain exclusions. The two forms combined offered a maximum of \$50,000.00 in liability coverage per occurrence.

On November 10, **1999**, Berson sued Bassaner Moving in small claims court. Berson filed a District Justice Complaint seeking \$8,000.00, arising out of dealings with the moving company as a consumer. On February **11**, 2000, judgment was

entered in his favor for \$6,000.00. Berson appealed the award to the Court of Common Pleas of Montgomery County.

On March 29, 2000, Berson filed a civil class action complaint against Bassaner Moving and the Bassaner Defendants in the Court of Common Pleas of Montgomery County. On November 1, 2000, he filed an amended class action complaint against Bassaner Moving and the Bassaner Defendants, alleging fraud and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("CPL"), 73 P.S. §201-1 et seq. The class has not been certified as of this date.

The Kerners also filed a lawsuit against Bassaner Moving and Andrew Bassaner in the Court of Common Pleas of Philadelphia County on May 4, 2001. The plaintiff noted at oral argument that the suit has been dismissed. This Court will not consider the claims of the Kerners at all in this analysis.

Lumbermens filed this federal suit requesting that the Court declare that it has no duty to indemnify Bassaner Moving for the losses alleged in the Berson and Kerner suits, nor to defend Bassaner Moving therein, pursuant to certain policy exclusions. Subject matter jurisdiction is based solely on diversity. Berson, Anthony Bassaner, Andrew Bassaner, and the

Kerners have been served. Bassaner Moving, Laura Bassaner, and Martin Brill have not been served.

Berson has moved to dismiss the complaint on the ground of lack of subject matter jurisdiction because the jurisdictional amount requirement is not met.

Jurisdiction under 28 U.S.C. § 1332(a) requires both diversity of citizenship and an amount in controversy in excess of \$75,000.00. 28 U.S.C. § 1332(a). Claims of multiple parties, when separate and distinct, may not be aggregated for jurisdictional amount purposes. Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 218 (3d Cir. 1999); 14B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure: Jurisdiction 3d § 3704, at 161 (3d ed. West 1998). In a class action, each class member must independently meet the jurisdictional amount. In re LifeUSA Holding, Inc., 242 F.3d 136, 142 (3d Cir. 2001).

In a declaratory judgment action on an insurance contract, the amount in controversy is based on the value of the underlying legal claim. Coreagis Ins. Co. v. Schuster, 127 F. Supp.2d 683, 686 (E.D. Pa 2001); Wright et al., § 3719, at 264. However, if the claim exceeds the policy limits, the policy limit constitutes the amount in controversy. Wright et al., § 3710, at

264-266 & n.18; Rowland H. Long, The Law of Liability Insurance § 26.02 [3] [a], at 26-13 - 26-14 (1993).

There is no dispute that Berson's individual claim against Bassaner Moving does not exceed \$75,000.00. In the amended class action complaint, Berson alleges that he was charged \$4,500.00, but quoted an estimate **of** \$1,177.50. In his motion to dismiss, Berson states that the claim is worth approximately \$8,000.00. But even if Berson's claim against Bassaner Moving were for more than \$75,000.00, Lumbermens' exposure for that claim could not exceed \$50,000.00 - the policy limit per occurrence.

Lumbermens argues that the underlying cause of action is the amended class action complaint that Berson filed on behalf **of** himself and all others similarly situated, and that the claims of the class, when aggregated, meet the jurisdictional threshold. The Third Circuit has made clear, however, that the claim of each class member in a class action must meet the jurisdictional amount.<sup>1</sup>

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1. None **of** the cases on which the plaintiff relies for its position is apposite. The cases involve non-class actions, and policy limitations or individual claims that exceed the amount-in-controversy requirements. Jumara v. State Farm Ins. Co., 55 F.3d 873, 877 (3d Cir. 1995) (husband and wife insureds seek \$200,000.00, where limits on two insurance policies were

(continued..)

Even if the Court looks at subject matter jurisdiction from the perspective of Bassaner Moving (the insured), the Court concludes that it does not have subject matter jurisdiction. It is conceivable that the underlying Berson class action could be certified and the class could obtain a judgment against the Bassaner Moving and the Bassaner Defendants for more than \$75,000.00. But that is a hypothetical possibility that is too speculative to allow the Court to assert jurisdiction at this time.

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1. (...continued)  
\$100,000.00 and \$300,000.00); Manze v. State Farm Ins. Co., 817 F.2d 1062, 1068 (3d Cir. 1987) (\$15,000.00 policy limit exceeded the \$10,000.00 amount in controversy requirement); Miller v. Liberty Mutual Group, 97 F. Supp. 2d 672, 674-76 (W.D. Pa. 2000) (decedent's estate sought upwards of \$2,000,000.00 for bodily injury, where policy limit was \$2,000,000.00).

Moreover, district courts have discretion to determine whether and when to entertain a declaratory judgment action, even when the suit otherwise satisfies subject matter jurisdictional requirements. Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995). Considerations include the practicality of the declaratory judgment, and principles of wise judicial administration. Id. at 288. All of those considerations point to dismissal of this case.

BY THE COURT:

  
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MARY A. McLAUGHLIN, J.

filed 6/17/02:  
A. Kane, usg  
M. Kaszak, usg