

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

JANET MEDLEY :
 :
 : CIVIL ACTION
 v. :
 :
 : NO. 01-3735
 AMERICAN INTERNATIONAL :
 INSURANCE COMPANY :

MEMORANDUM ORDER

This case is styled as a putative class action. Plaintiff asserts claims for breach of contract, bad faith and violation of the Pennsylvania Unfair Trade Practices & Consumer Protection Law. The claims are predicated on the withholding by the defendant insurer of an amount for depreciation when paying plaintiff for the cost of repair for a partial loss under a "replacement cost" homeowner policy. Plaintiff also seeks to represent a class of all Pennsylvania homeowners who were insured during the past six years by defendant and had amounts withheld for depreciation from payments for the cost of repair for a partial loss.

Jurisdiction is predicated on 28 U.S.C. § 1332. Plaintiff alleges that she resides in Pennsylvania by which the court assumes plaintiffs meant to allege Pennsylvania

citizenship.¹ Plaintiff alleges that defendant's principal place of business is in Indiana. She does not allege defendant's state of incorporation.²

"Federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte," Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995); American Policyholders Ins. v. Nyacol Products, 989 F.2d 1256, 1258 (1st Cir. 1993) ("a federal court is under an unflagging duty to ensure that it has jurisdiction"); Steel Valley Authority v.

¹See Wolfe v. Hartford Life & Annuity Ins. Co., 148 U.S. 389 (1893) (allegation of "residence" insufficient to confer diversity jurisdiction); Krasnov v. Dinan, 465 U.S. 1298, 1300 (3d Cir. 1972) ("residency in a state is insufficient for purposes of diversity"); Guerrino v. Ohio Casualty Ins. Co., 423 F.2d 419, 421 (3d Cir. 1970) ("[a]llegations of citizenship are required to meet the jurisdictional requirement"); Darling v. Piniella, 1991 WL 193524, *4 (E.D. Pa. Sept. 27, 1991) ("[d]iversity jurisdiction is predicated on citizenship, not residency"); Stanko v. LeMond, 1991 WL 152940, *1 (E.D. Pa. Aug. 6, 1991) ("citizenship" and "residence" "are different concepts"); Brooks v. Hickman, 101 F.R.D. 16, 18 (W.D. Pa. 1984) ("diversity jurisdiction is based on citizenship, not residence"); Forman v. BRI CORP., 532 F. Supp. 49, 51 (E.D. Pa. 1982) ("allegations of residency do not properly invoke [diversity] jurisdiction")

²See Midlantic Nat'l Bank v. E.F. Hansen, 48 F.3d 693, 696 (3d Cir.) (a corporation is a citizen both of the state of its incorporation and the state in which its principal place of business is located), cert. dismissed sub nom. E.F. Hansen v. Midlantic Nat'l Bank, 116 S. Ct. 32 (1995); Rodriguez v. SK & F Co., 833 F.2d 8, 9 (1st Cir. 1987) (same); Wisconsin Knife Works, 781 F.2d at 1282 (same); Wymard v. McCloskey & Co., Inc., 342 F.2d 495, 497 (3d Cir.) (same), cert. denied sub nom. McCloskey & Co. v. Wymard, 382 U.S. 823 (1965)

Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) ("lack of subject matter jurisdiction voids any decree entered in a federal court"); Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) ("[t]he first thing a federal judge should do when a complaint is filed is check to see that federal jurisdiction is properly alleged").

A federal court lacks subject matter jurisdiction over a putative class action if the claims of the named plaintiffs do not satisfy the amount in controversy requirement. See Sanderson, Thompson, Ratledge & Simny v. AWACS, Inc., 958 F. Supp. 947, 961-62 & n.6 (D. Del. 1997). This amount must exceed \$75,000 exclusive of interest and costs. See 28 U.S.C. § 1332(a). In calculating the amount in controversy, the separate claims of each class member cannot be aggregated to meet the jurisdictional amount. See Zahn v. Int'l Paper Co., 414 U.S. 291, 301 (1973); Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 218 (3d Cir. 1999); Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993); Pierson v. Source Perrier, S.A., 848 F. Supp. 1186, 1188 (E.D. Pa. 1994).³ Any attorneys' fees and punitive damages must be distributed pro rata to all class members in determining the amount in controversy. See

³Putative class actions, prior to certification, are treated as class actions for jurisdictional purposes. See Packard, 994 F.2d at 1043 n.2; Garcia v. General Motors Corp., 910 F. Supp. 160, 163-64 (D.N.J. 1995).

Johnson v. Gerber Prods. Co., 949 F. Supp. 327, 329-30 (E.D. Pa. 1996)(attorneys' fees may not be aggregated); Pierson, 848 F. Supp. at 1189 (punitive damages may not be aggregated); McNamara v. Philip Morris Cos., Inc., 1999 WL 554592, *2 (E.D. Pa. July 7, 1999)(attorneys' fees must be apportioned pro rata); Floyd v. Liberty Mut. Fire Ins., 1996 WL 102322, *2 (E.D. Pa. March 5, 1996)(neither attorneys' fees nor punitive damages may be aggregated to satisfy jurisdictional amount).

The amount allegedly withheld wrongfully from plaintiff is \$264.09. Allowing for any realistically conceivable award of punitive damages and attorneys' fees which could withstand scrutiny, it is clear that plaintiff cannot satisfy the jurisdictional threshold.

ACCORDINGLY, this day of August, 2001, **IT IS HEREBY ORDERED** that the above action is **DISMISSED** for lack of subject matter jurisdiction.

BY THE COURT:

JAY C. WALDMAN, J.