

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

GENERAL AGENTS INSURANCE COMPANY : CIVIL ACTION
OF AMERICA, INC. :
v. :
: :
DAVID BOYNES, CHARLES SMALL T/A :
PERRY'S AUTO SERVICE, and PERRY'S :
AUTO SERVICE : NO. 99-1081

MEMORANDUM and ORDER

Norma L. Shapiro, S.J.

July 8, 1999

Plaintiff, General Agents Insurance Company of America, filed this action for a declaratory judgment that it is under no obligation to provide insurance coverage to defendant. Defendant Boynes filed a responsive motion to dismiss for lack of subject-matter jurisdiction and a motion for sanctions. Defendant asserts that diversity does not exist because the plaintiff is an insurance company and is deemed a citizen of the state of the insured under 28 U.S.C. § 1332(c)(1). However, this provision applies to actions against an insurance company, not by an insurance company.

General Agents Insurance Company is incorporated in Texas and its principal place of business is also there. Defendant Boynes is a resident of Pennsylvania; defendant Perry's Auto Service is a corporation with its principal place of business in Pennsylvania.

Federal jurisdiction, under 28 U.S.C. § 1332, requires diversity of citizenship and an amount in controversy exceeding \$75,000,

"...except that in any direct action against the insurer of a policy... to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the state of which the insured is a citizen, as well as the state by which the insurer has been incorporated and the state where it has its principal place of business."

28 U.S.C. § 1332 (c)(1).

An action by an insurance company is not against an insurer, Northbrook National Insurance Company v. Brewer, 493 U.S. 6, 10 (1989), because the insurer institutes the action. The Supreme Court has explicitly and unambiguously held that 28 U.S.C. § 1332 (c)(1) does not apply to actions by insurers, but applies only to direct actions against an insurer when the insured is not joined as a defendant. Northbrook, 493 U.S. at 9. The Court found nothing in the legislative history indicating that the proviso applied to actions instituted by insurers. Congress could have used language to bar jurisdiction of actions instituted by insurers, but it did not. This action was instituted by an insurer and is not precluded by 28 U.S.C. § 1332 (c)(1). See also, Metropolitan Life Insurance Company v. Estate of Cammon, 929 F. 2d 1220, 1223 (C.A. 7th 1991); Evanston Insurance Company v. Jimco Inc., 844 F.2d 1185, 1188 (C.A. 5th 1988). General Agents Insurance Company is not a citizen of the Pennsylvania; there is federal diversity jurisdiction.

The frivolous motion to dismiss for lack of subject-matter jurisdiction and the motion for sanctions are denied with costs to the plaintiff.

An appropriate order follows.

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| and PERRY'S AUTO SERVICE | : | NO. 99-1081 |

ORDER

AND NOW, this 8th day of July, 1999, upon consideration of the Motion to Dismiss for Lack of Subject-Matter Jurisdiction, and Plaintiff's response thereto, it is hereby ORDERED that the Motion to Dismiss for Lack of Subject Matter Jurisdiction is DENIED; costs are awarded to the plaintiff. Defendant shall move, answer, or otherwise plead within ten (10) days or plaintiff shall move for default judgment.

BY THE COURT:

J.

