

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARK SCOTT CIRIELLO, :
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 Plaintiff, :
 :
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 v. : Civil Action No. 02-1394-JJF
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 U.S. SUPREME COURT, et. al, :
 :
 Defendants. :
 :
 :

Mark Scott Ciriello, Pro Se Plaintiff.

Laurence V. Cronin, Esquire of SMITH, KATZENSTEIN, & FURLOW,
Wilmington, Delaware.
Of Counsel: Dean R. Lospinoso, Esquire of CUYLER BURK, LLP,
Parsippany, New Jersey.
Attorney for Defendant Prudential Insurance Company of America.

Colm F. Connolly, Esquire, United States Attorney, Paulette K.
Nash, Esquire, Assistant United States Attorney, UNITED STATES
DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for the Federal Defendants.

MEMORANDUM OPINION

August 12, 2003

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion To Dismiss (D.I. 6) filed by Defendant, Prudential Insurance Company of America, requesting the Court to dismiss the Complaint filed by Plaintiff, Mark Scott Ciriello, for lack of subject matter jurisdiction. For the reasons discussed, Defendant's Motion To Dismiss will be granted.

BACKGROUND

By his Complaint, Plaintiff alleges that he is entitled to death benefits under three life insurance policies insuring the life of Lucille C. Polletto ("Polletto"). The insurance policies are designated as Policy Numbers 64693270, 64734796 and D83000753 (the "Policies"). (D.I. 1 at ¶ 3). Plaintiff asserts that he is entitled to the proceeds of these Policies as a result of Polletto's death. (D.I. 1 at ¶ 5).

In his initial Complaint, Plaintiff sought a combined payment of \$40,000 under the three policies. Specifically, Plaintiff sought payments of \$10,000 under Policy No. 64693270, \$10,000 under Policy No. 64734797, and \$20,000 under Policy No. D83000573. (D.I. 1 at p. 11). By an "Amended and Supplemental Pleading," Plaintiff sought to amend the relief he originally requested for a total of \$50,000 under the three policies. (D.I. 4). In pertinent part, Plaintiff states:

Please amend the \$20,000.00 relief page 11 to the amount of \$30,000. [sic] Totaling a \$50,000.00

policy(s). [sic] Under the Rule 15 amendment the \$40,000.00 policy(s), stated page -11- is hereby amended to totaling a \$50,000.00 policy(s). *The total relief requested is the unpaid amount of \$50,000.00 on the total of the 3 policys.* [sic]

(D.I. 4) (emphasis added).

Plaintiff alleges that he is entitled to relief because "the policy took a terrible turn for the worse," and a payment was due, but was not delivered. Instead, Plaintiff claims that he received a "bunch of papers." (D.I. 1 at ¶ 10).

Plaintiff attaches to his Complaint check statements pertaining to Policy No. 6463270. (D.I. 1 at Ex. B, C). These statements evidence that two checks were issued paying death benefits on this policy in the amount of \$2,436.44 and \$1,219.40. A third exhibit to the Complaint is a copy of a check issued to Plaintiff by Defendant in the amount of \$1,219.40. Plaintiff's Amended and Supplemental Pleading includes a copy of a check statement showing that Defendant made another payment of \$11,144.08 on Policy No. 64734796.

In addition to his claims against Defendant, Plaintiff also names several government agencies as defendants. Plaintiff raises a claim for "impeachment" in his Complaint, but all the factual recitations of the Complaint are related to the foregoing insurance policies.

In lieu of answering the Complaint, Defendant filed the instant Motion To Dismiss, requesting dismissal pursuant to

Federal Rule of Civil Procedure 12(b)(1). Plaintiff did not respond to the Motion, and the Court subsequently ordered Plaintiff to file an Answering Brief within twenty days of the date of the Court's order. By the Order, the Court further advised Plaintiff that the matter would be decided on the record before it if no Answering Brief was filed. To date, Plaintiff has failed to file a response to the pending Motion To Dismiss. Accordingly, the Court will proceed to resolve this matter on the record before it.

DISCUSSION

Pursuant to Rule 12(b)(1), the court may dismiss a lawsuit for failure to establish subject matter jurisdiction. Where, as here, the defendant has not filed an answer to the complaint, the attack on subject matter jurisdiction is considered a facial attack. Lexington Insurance Co. v. Forrest, 2003 WL 21087014, *6 (E.D. Pa. May 6, 2003). When considering a facial attack under Rule 12(b)(1), the court must accept the allegations of the complaint as true and draw all reasonable inferences in favor of the plaintiff. Id. The party invoking federal jurisdiction bears the burden of pleading the facts necessary to support jurisdiction. Rudolph v. Adamar of N.J., Inc., 153 F. Supp. 2d 528, 533 (D.N.J. 2001).

Federal subject matter jurisdiction is generally premised on two grounds: (1) a federal question involving the constitution

or laws of the United States, or (2) diversity of citizenship. Id. at 181. By its Motion, Defendant contends that Plaintiff has not alleged jurisdiction under either ground, and therefore dismissal is appropriate.

Although Plaintiff raises a claim for "impeachment," all of the factual allegations of the Complaint relate to his alleged entitlement to death benefits on the Policies. Because Plaintiff's claims sound in breach of contract rather than in any constitutional or federal question, the Court concludes that Plaintiff has failed to invoke the Court's federal question jurisdiction.

With regard to jurisdiction arising from diversity of citizenship, the plaintiff must allege complete diversity among the defendants and that the amount in question exceeds \$75,000. 28 U.S.C. § 1332. The plaintiff bears the burden of affirmatively pleading the citizenship of all parties and the amount in controversy. Lewis v. United Air Lines, Inc., 117 F. Supp. 2d 434, 442 (D.N.J. 2000). In this case, Plaintiff fails to allege his citizenship or the citizenship of Defendant. However, even if Plaintiff could establish diversity of citizenship among the parties, Plaintiff has not satisfied the jurisdictional amount in controversy. In determining the jurisdictional amount, "the sum claimed by plaintiff controls if the claim is apparently made in good faith." St. Paul Mercury

Indemnification Co. v. Red Cab Co., 303 U.S. 283, 288 (1938).

Dismissal is only appropriate if the court is certain that the jurisdictional amount cannot be met and the claims are insubstantial on their face. In re LifeUSA Holding Inc., 242 F.3d 136, 143 (3d Cir. 2001); Lunderstadt v. Colafella, 885 F.2d 66, 69-70 (holding in a federal question case that "a federal court may dismiss for lack of jurisdiction only if the claims are 'insubstantial on their face'"). Once the defendant challenges the plaintiff's allegations regarding the amount in controversy, the plaintiff must produce sufficient evidence to satisfy his or her claims related to the jurisdictional amount. Suber v. Chrysler Corp., 104 F.3d 578, 583 (3d Cir. 1997).

In this case, Plaintiff alleges that he is entitled to the "total unpaid amount" of \$50,000. Thus, Plaintiff has not satisfied the \$75,000 threshold to support the exercise of diversity jurisdiction. Further, Plaintiff has not responded to Defendant's Motion To Dismiss, and thus, has failed to come forward with facts necessary to support diversity jurisdiction. Accordingly, the Court concludes that Plaintiff's allegations fail to support diversity jurisdiction or federal question jurisdiction, and therefore, the Court will grant Defendant's Motion To Dismiss pursuant to Rule 12(b)(1).

CONCLUSION

For the reasons discussed, Defendant's Motion To Dismiss

will be granted.

An appropriate Order will be entered.

