IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT CHRISTIANSTED

CONTINENTAL INSURANCE COMPANY Plaintiff vs. SAMUEL MOVING, RUPERT SAMUEL, LORRINA WEBBER, HUBERT FORDE, JOSE SOTO, PAUL PAYNE, NOEL SPENCER and ALBAN TITUS Defendants	CIVIL NO. 346/82 ACTION FOR INTERPLEADER AND/OR DECLARATORY JUDGMENT

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FINCH, Judge

MEMORANDUM OPINION AND ORDER

June 16, 1983

I. INTRODUCTION

This matter came before the Court on motion of defendants Rupert Samuel, Jose Soto, Samuel Moving, Paul Payne, Lorrina Webber and Hubert Forde's to dismiss the instant action on the grounds that it is not a proper action for interpleader pursuant to Fed. R. Civ. P. 22; and on the additional ground that defendants are not proper parties in an action for declaratory judgment pursuant to Fed. R. Civ. P. 57. Defendant Rupert Samuel has filed a motion for summary judgment pursuant to Fed. R. Civ. P. 56. Plaintiff Continental Insurance Company has filed an opposition thereto and a cross motion for summary judgment. For the reasons set forth below, the defendants Rupert Samuel, Jose Soto, Paul Payne, Samuel Moving, Lorrina Webber and Hubert Forde's motion to dismiss will be denied, defendant Rupert Samuel's motion for summary judgment will be denied and plaintiff's cross motion for summary judgment will be granted.

II. FACTS

The facts giving rise to this action are undisputed. On March 3, 1981, defendant Alban Titus (Titus) procured an insurance policy from plaintiff Continental Insurance Company, which provided liability, medical and uninsured motorist coverage for two vehicles owned by Titus, a 1976 Pontiac

Catalina and a 1978 Chevrolet Pickup truck. On October 1, 1981, while the policy was in full force and effect, Titus was involved in an automobile accident in which defendants Rupert Samuel, Samuel Moving, Paul Payne, Jose Soto, Lorrina Webber and Noel Spencer were passengers in a taxi van operated by Hubert Forde.

Plaintiff filed the instant action on May 7, 1982, alleging in its complaint that as a result of the above mentioned automobile accident some of the defendants sustained injury so serious in nature that the amount of damages ultimately would likely exceed the limits of the insurance policy issued to Titus and, therefore, plaintiff was doubtful as to how the funds available under the policy should be disbursed. Plaintiff petitioned that the Court distribute the proceeds of the policy in an amount not in excess of the policy limits and that it be discharged from further responsibility to defend Titus, and, further that it be discharged from additional claims.

On May 10, 1982, plaintiff deposited into the registry of the court a certified check (No. 155998) in the amount of $20,000.00, which remains in the registry pending the issuance of a court order setting forth the manner of distribution of funds.

III. DISCUSSION

A. MOTION TO DISMISS

In the instant case defendants rely on two theories to support their motion to dismiss. First, defendants maintain that they have been improperly joined in the action for declaratory judgment. Secondly, defendants contend that the interpleader action is not proper because of the absence of a direct action statute in the U.S. Virgin Islands.[1/]

The contention that the named defendants in the case at bar are not proper parties to the declaratory judgment action is without force, and there exists countervailing reasons that persuade this Court to reach a different conclusion.

It is a well settled principle of law that declaratory judgments will be issued only where an actual or justiciable controversy exists.[2/] Evers v. Dwyer, 358 U.S. 202 (1958);

1/ Direct action statutes provide that an injured party may bring a direct action against a tortfeasor's liability insurer as opposed to first obtaining a judgment against the insured (tortfeasor) and then bringing a suit against the liability insurer.

2/ In Aetna Life Ins. Co. of Hartford v. Hayworth, 300 U.S. 227 (1937), Chief Justice Hughes framed a classic statement outlining the statutory and constitutional requirements of a controversy. The Chief Justice stated:

> A "controversy" in this sense must be one that is appropriate for judicial determination... A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character, from one that is academic or moot... The controversy must be definite

Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270 (1941); Cutaiar v. Marshall, 590 F.2d 523 (3rd Cir. 1979); Spivey v. Travelers Ins. Companies, 407 F. Supp. 916 (E.D. Pa. 1976); Teamsters Local 513 v. Wojcik, 325 F. Supp. 989 (E.D. Pa. 1971).

In Maryland Casualty Co. v. Pacific Coal & Oil Co.,, supra, the Supreme Court enunciated a basic test to assist the courts in cases in determining whether or not an actual controversy is present. Mr. Justice Murphy, speaking for the Court stated: "Basically, the question in each case is whether the facts alleged under all circumstances, show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." As stated in 22 Am. Jur. 2d Declaratory Judgments §41, at 896 (1965):

2/ (cont'd.)

> and concrete, touching the legal relations of parties having adverse legal interests... It must be a real and substantial controversy admitting specific relief through a decree of a conclusive character,as distinguished from an opinion advising what the law would be upon a hypothetical state of facts... Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigant may not require the award of process or the payment of damages.

> An actual controversy is usually held to exist between the insurer and the injured party suing the insured, since there is generally a real possibility that the injured party might look to the insurer for payment; <u>and the obtaining of a judgment against the insured is generally held not to be a condition precedent to the existence of an actual controversy involving the liability of the insured</u> (emphasis supplied).

Defendants in the case at bar are persons who, allegedly, have sustained injuries as a result of the automobile accident which occurred on October 1, 1981, and who have brought actions against the insured, Alban Titus, seeking judgments that plaintiff alleges will exceed the liability coverage under the policy procured by Titus from plaintiff.[3/] Therefore, the instant case presents no remote or contingent future possibility of dispute but a real and immiment threat facing the plaintiff since there is a very real possibility that the defendants will look to the plaintiff for payment of judgments obtained against the plaintiff's insured, Alban Titus. Clearly, there exists an actual controversy between defendants and the plaintiff. Accordingly, the Court concludes that defendants are proper parties in the case at bar.

3/ The following cases have been filed in the Territorial Court: <u>Samuel Moving</u> v. <u>Alban Titus</u>, Civil No. 1567/81; <u>Rupert Samuel</u> v. <u>Alban Titus</u>, Civil No. 264/82; <u>Hubert Forde</u> v. <u>Alban Titus</u>, Civil No. 458/82; <u>Maria Augustus, as next friend and guardian for Paul Payne</u> v. <u>Alban Titus</u>, Civil No. 547/82; and <u>Jose Soto</u> v. <u>Alban Titus</u>, Civil No. 76/83.

The Court is not convinced by defendants' remaining argument in support of their motion to dismiss. Defendants assert that because of the absence of a direct action statute against an insurance carrier in the U.S. Virgin Islands, none of the defendants have any claims or potential claims against plaintiff. The analysis which is utilized in this type of approach to Rule 22 interpleader actions is that in the absence of a state statute authorizing direct actions against an insurer, injured parties are precluded from commencing actions directly against the insurance company because of the remoteness of their claims. Specifically, where there exists no privity between the injured party and the tortfeasor's liability insurer, the injured party has no right of action against the insurance company. _See generally_ 7A Am. Jur. 2d _Automobile Insurance_ §448 (1980).

Counsels for defendants are directed to _State Farm & Casualty Company_ v. _Tashire_, 386 U.S. 253 (1967), which rejected the position that in the absence of state statutes authorizing direct actions against an insurer, the insurer should be denied interpleader. In _Tashire_, the Supreme Court observed:

> Were an insurance company required to await reduction of claims to judgment, the first claimant to obtain such a judgment or to negotiate a settlement might appropriate all or a disproportionate slice of the fund

> before his fellow claimants were able to establish their claims. The difficulties such a race to judgment pose for the insurer, and the unfairness which may result to some claimants, were among the principal evils the interpleader device was intended to remedy.

See also, Travelers Indem. Co. v. Greyhound Lines, Inc., 377 F.2d 325 (5th Cir. 1967), cert. denied, 389 U.S. 832 (1968); Allstate Ins. Co. v. McNeill, 382 F.2d 84 (4th Cir. 1967), cert. denied, 392 U.S. 931 (1968).

As stated in 7 C. Wright & A. Miller, Federal Practice and Procedure §1707, at 389 (1971):

> The Tashire approach is sound and has been followed in a number of recent decisions. In order to achieve the important benefits of securing a prompt and inclusive determination in a single action of the rights of all the parties claiming an interest in the stake, courts should not hesitate to allow interpleader even when prospective claims are involved.

Accordingly, the Court concludes that the absence of a direct action statute in the U.S. Virgin Islands does not preclude the plaintiff from bringing the present interpleader action.

B. DEFENDANT SAMUEL'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF CONTINENTAL INSURANCE COMPANY'S CROSS MOTION FOR SUMMARY JUDGMENT

Samuel argues that the instant case must be dismissed since plaintiff Continental Insurance Company has failed to deposit the requisite amount of money into the court registry pending the resolution of the instant case. He maintains that plaintiff's obligation to insure Titus is $40,000.00 as opposed to the $20,000.00 that plaintiff asserts is the maximum liability of coverage under the policy.

The policy of insurance in issue provides liability coverage on two vehicles, Titus' 1978 Chevrolet Pickup truck and his wife's 1976 Pontiac Catalina. By the terms and declarations of the policy, liability coverage was provided up to the limits of $10,000.00 per person and $20,000.00 per accident. Samuel argues, however, that since Titus' wife's vehicle is covered under the policy <u>and</u> a separate premium was charged for each vehicle, that plaintiff Continental Insurance Company is obligated to insure Titus for an additional or "excess" amount of $20,000.00.

In the Virgin Islands, compulsory automobile liability insurance is governed by Title 20 V.I.C. §703 which provides in relevant part:

> An owner's policy of liability insurance...
>
> (b) shall insure the person named therein... against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such vehicle or vehicles in the Virgin Islands, subject to maximum coverage, exclusive of interest and costs, with respect to each such vehicle as follows:

	Bodily Injury, Including Mandatory Uninsured Motorist Coverage		Property Damage
	One person One Accident	Two or More Persons One Accident	One Accident
(1) Private passenger vehicles, trucks with a gross vehicle weight of three-quarter (3/4) ton or less and other passenger carrying vehicles not otherwise listed	$10,000	$20,000	$10,000

The above quoted language provides that more than one vehicle can be insured under an owner's policy. Yet, the Court has failed to identify any language in Title 20 V.I.C. §703 which requires the "stacking" or "pyramiding" of liability coverage when more than one vehicle is covered under a policy.[4/]

Plaintiff maintains that clear and unambiguous language in the policy appearing on page 2 under Part A labelled "Limits of Liability" limits the maximum liability coverage allocated to a vehicle driven by one of its insureds. The

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4/ "Stacking" or "pyramiding" is the combining of all available coverages in order to create a greater pool from which an insured may be compensated for his loss. See generally 17 G. Couch, Couch On Insurance 2d §56:34, at 45-47 (1983).

relevant language reads as follows:

> The limit of liability shown in the Declarations for "each person" for Bodily Liability is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one auto accident. Subject to the limit for "each person", the limit of liability shown in the Declarations or in this endorsement for "each accident" for Bodily Injury liability is our maximum limit of liability for all damages for bodily injury resulting from any one auto accident. The limit of liability shown in the Declarations or in the endorsement for "each accident" for property damage liability is our maximum limit of liability for all damages to all property resulting from any one accident. <u>This is the most we will pay regardless of the number of covered persons, claims made, vehicles or premiums shown in the declarations, or vehicles involved in the auto accident</u> (emphasis added).

It is clear from a reading of the preceding language of the insurance policy that the maximum limit of liability for bodily injury involving two or more persons is that amount stated in the declarations - $20,000.00. Moreover, it is a general principle of law that if plainly expressed, insurers are entitled to have liability limitations in the policy construed and enforced as expressed, and the law prohibits looking beyond the language of the parties in interpreting the contract. <u>Weiner</u> v. <u>Metropolitan Life Ins. Co.</u>, 416 F. Supp. 551 (E.D. Pa. 1976); <u>Turner</u> v. <u>National Life & Accident Ins. Co.</u>, 372 F. Supp. 1228 (E.D. Pa. 1974), <u>aff'd</u>, 510 F. 2d 971 (3rd Cir. 1975); <u>Southeastern Pennsylvania Transportation Authority</u> v. <u>Transit Gas Co.</u>, 412 F. Supp. 839 (E.D. Pa.

1974). As stated in 44 Am. Jur. 2d Insurance §1551, at 554 (1982):

> In the absence of contrary or modifying provisions in a statute, the liability of an insurer and the extent of the loss under a policy of liability or indemnity insurance must be determined, measured, and limited by the terms of the contract (footnote omitted). The covered risks may not be extended by judicial construction to losses not expressly, or by necessary implication within the coverage of the policy (footnote omitted). Accordingly, liability policy provisions fixing a maximum liability of the insurer from damages are generally given effect (footnote omitted).

If the Court were to accept the notion that "stacking" is allowed when more than one vehicle is covered under a policy of insurance and separate premiums are paid, the following would occur. If an owner of ten vehicles procures a single insurance policy which provides liability coverage on each vehicle up to a maximum of $20,000 per accident, each automobile accident could result in liability of $200,000. Preexisting case law and logic dictate that this Court not allow the "stacking" of insurance when presented with situations similar to the above described occurrence.

Accordingly, the Court holds that when there is in existence a single multivehicle policy of insurance, the maximum amount of liability coverage allowed an insured is that amount which is clearly and unambiguously stated in the terms of the policy. In the case at bar that amount is $20,000.00.

IV. CONCLUSION

For the foregoing reasons, defendants' motion to dismiss is denied, defendant Rupert Samuel's motion for summary judgment is denied and plaintiff's motion for summary judgment is granted.

DATED: June 16, 1983

Raymond L. Finch, Judge