

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X
PHILADELPHIA INDEMNITY :
INSURANCE, :
 :
 Plaintiff, :
 :
 v. : Case No. 3:06CV00375 (AWT)
 :
 JOHN H. PECK, ELLEN PECK, :
 EXECUTRIX OF ESTATE OF :
 JOHN H. PECK, SR., :
 PECK & PECK, CHRISTINE B. :
 PECK, LOUISE R. ZITO, :
 PECK PECK & ZITO, :
 NORA BARKER-JOSEPH, :
 :
 Defendants. :
 :
-----X

ENDORSEMENT ORDER

Defendant Nora Barker-Joseph's Motion to Dismiss (Doc. No. 13) is hereby DENIED.

The defendant relies on 28 U.S.C. § 1332(c)(1) in support of her contention that there is no diversity jurisdiction in this action. However, that provision expressly refers to a direct action "against" an insurer, which this is not. Moreover, "as the legislative history and subsequent cases make clear, § 1332(c) applies only to these limited 'direct actions' and not to 'all actions' brought against an insurer in which its insured is not joined as a defendant." Bourget v. Gov't Employees Ins. Co., 313 F. Supp. 367, 370 (D. Conn. 1970).

Thus, this provision has been held inapplicable in diversity actions to determine the liability of insurers. It likewise has been held inapplicable in diversity

actions by the insured (a) for a declaration of the validity of his policy; (b) for the benefit of his judgment creditors; and (c) against his own carrier under an uninsured motorist provision. Finally, in an action . . . where plaintiff first successfully sued the tortfeasor, and then instituted a subsequent action against the tortfeasor's insurer, § 1332(c) was held inapplicable.

Id. (footnotes omitted).

It is so ordered.

Dated this 16th day of June 2006, at Hartford, Connecticut.

/s/Alvin W. Thompson

Alvin W. Thompson
United States District Judge