

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE CO.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 04-142-B-W
)	
VAUGHN MITCHELL and)	
CARLA HALL,)	
)	
Defendants)	

RECOMMENDED DECISION

Defendant Carla Hall, individually and as the Personal Representative of the Estate of Hylie K. Hall, Jr., has filed two motions in this insurance declaratory judgment action. She has filed both a motion to dismiss (Docket No. 6) and a motion requesting that a question of Maine law be certified to the Maine Supreme Judicial Court (Docket No. 9). I now recommend that the court **DENY** both motions.¹

Defendant Hall lists nine grounds for dismissal of plaintiff State Farm's action in her motion to dismiss and briefs them with varying degrees of intensity in her accompanying memorandum (Docket No. 7). The nine grounds are as follows:

First, Plaintiff's Complaint fails to state a claim upon which relief against Defendant, Carla Hall, Individually and as Personal Representative of the Estate of Hylie K. Hall, Jr., can be granted. There are issues of fact and law that are disputed which prevent the Plaintiff from recovering in this forum.

Second, an ambiguity exists following the decisions of Jack v. Tracy, 722 A.2d 869 (Me.1999) and Flaherty v. Allstate Insurance Co., 822 A.2d 1159 (Me. 2003) as to whether loss of consortium or loss of comfort,

¹ In a companion recommended decision I also recommend that the court grant the plaintiff's motion for summary judgment. That decision sets forth the facts underlying this complaint in greater detail.

society, and companionship, pursuant to 18-A M.R.S.A. §2-804(b) are no longer derivative actions in a wrongful death case, thereby creating liability for the insurance company to the individual heirs. The Defendant is requesting that this be clarified by way of a certified question to the Maine Supreme Judicial Court pursuant to Me. R. App. P. 25. See Request for Certified Question.

Third, there is no reason or statutory basis for attorneys' fees to be awarded to Plaintiff.

Fourth, Plaintiff's Complaint should be dismissed on the grounds that this Court lacks jurisdiction over the subject matter pursuant to Fed.R.Civ.P. 12(h)(3).

Fifth, Plaintiff's Complaint should be dismissed on the grounds that no case or controversy exists. This case has been filed in Federal Court prematurely.

Sixth, probate law prohibits Plaintiff from now claiming to be creditor of the Estate in the Hancock County Probate Court, Docket No. 03-363, as the time has expired pursuant to 18-A M.R.S.A. §3-803.²

Seventh, Plaintiff's Complaint should be dismissed on the grounds of improper venue.

Eighth, Plaintiff's Complaint should be dismissed on the ground that this Court lacks personal jurisdiction pursuant to Fed.Civ.P. 12(b)(2).

Ninth, the controversy in question may fall below the \$75,000.00 threshold required under 28 U.S.C. §1332.

The "companion" motion (Docket No. 9) requests that this court certify the following question to the Maine Supreme Judicial Court:

The question is as follows: Whether, in a wrongful death action, the "each accident" limit, as defined in Plaintiff's insurance policy, applies to multiple heirs claims for loss of comfort, society, and companionship, as stated in 18-A M.R.S.A. §2-804(b), instead of those claims being only derivative of the deceased's bodily injury claim and subject to the "each person" limit.

² I cannot help but smile when I am confronted with the mental picture of the Maine Probate Judge confronted with State Farm's "claim" for declaratory relief in ongoing probate proceedings. State Farm's creditor "claim" would be that it wants to contribute \$100,000.00 to the estate.

I direct the court's attention to State Farm's opposition memoranda (Docket No. 12 & 13) and commend it as a soldierly attempt to respond. The issue in this case, and it is not one I treat lightly or suggest that Hall has inappropriately presented arguments in opposition to, is the issue joined by plaintiff's motion for summary judgment and it is on that motion that I have focused my attention. For reasons that become obvious upon reading that recommended decision, I am not recommending that the court certify the proposed question to the Law Court. Nor do I consider there to be any merit to Hall's attempt to call this court's diversity jurisdiction into question. First, Hall analyzes the diversity question as though it were a choice of law question. (Docket No. 7 at 10.) There is no serious contention that the parties do not have diverse citizenship. Second, Hall merely argues that the amount in question may be less than \$75,000. (Id. at 11.) In fact, Hall's position in this litigation is that State Farm is liable to her for an additional \$100,000 in coverage. Her claim for loss of consortium against her co-defendant Vaughn, State Farm's insured, arises out for the death of her husband, a loss for which State Farm has already offered its policy limits. In my view, State Farm's complaint sets forth a good faith statement that the amount in controversy more likely than not exceeds \$75,000. See Satterfield v. F.W. Webb, Inc., 334 F. Supp. 2d 1, 3 (D. Me. 2004) (citing Spielman v. Genzyme Corp., 251 F.3d 1, 5 (1st Cir. 2001) and Coventry Sewage Assocs. v. Dworkin Realty Co., 71 F.3d 1, 6 (1st Cir. 1995)).

Conclusion

Based upon the foregoing, read in the context of my recommended decision on the motion for summary judgment, I recommend that the motions be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: January 11, 2005

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY v. MITCHELL et al
Assigned to: JUDGE JOHN A. WOODCOCK, JR
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 08/16/2004
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Plaintiff

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COMPANY**

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Defendant

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