

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

COLONY INSURANCE COMPANY

PLAINTIFF

v.

CIVIL ACTION NO. 3:08CV-512-S

DR. EDWARD CAMPBELL, et al.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the court on motion of the defendant, All Dry, Inc., to dismiss this declaratory judgment action (DN 8).

In this action, the plaintiff, Colony Insurance Company, seeks a declaration that it has no duty to defend or to indemnify All Dry under a Commercial General Liability Insurance Policy for claims made against All Dry by Dr. and Mrs. Edward Campbell. Since the filing of the motion, an arbitration award was rendered by Judge Tom McDonald awarding the Campbells \$61,652.00 plus 12% interest from the date of the award. There is no longer a pending state court action concerning this matter.

The parties are diverse. Colony Insurance is a Virginia Corporation with its principal place of business in Richmond, Virginia. All Dry is a Kentucky corporation with its principal place of business in Campbellsville, Kentucky. The Campbells are Kentucky residents. At the time of the filing of the action, the amount in controversy exceeded \$75,000.00. *See*, Jefferson Circuit Court Complaint and attachments. The court is therefore not divested of jurisdiction to entertain the declaratory judgment action by the rendering of an arbitration award in an amount below this court's jurisdictional minimum. *See, Automobile Club Insurance Company v. Craig*, 328 F.Supp. 988 (E.D.Ky. 1971).

The Campbells were granted leave to file an amended answer, counterclaim and cross-claim by which they seek payment of the award by Colony, in the event there is coverage. They have also cross-claimed against All-Dry, seeking confirmation of the arbitration award pursuant to KRS 417.150.

The grounds for the motion to dismiss being no longer viable, the motion will be denied.

Motion having been made and for the reasons set forth hereinabove and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the defendant, All Dry, Inc., to dismiss (DN 8) is **DENIED**.

IT IS SO ORDERED.