

Amount in Controversy for Diversity Jurisdiction:

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Diversity jurisdiction exists when there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. Generally, the amount in controversy articulated in Plaintiff's complaint is controlling. However, it is not always that easy. What happens when specific damages are not alleged? How are damages assessed when the relief sought is a declaratory judgment? The court recently examined both scenarios.

In *James River Insurance Company v. William Kramer & Associates, LLC* 2018 WL 851092, Plaintiff filed an action in state court alleging Defendant wrongfully exhausted \$10 million in primary coverage, requiring it, along with another insurer, to pay in excess of \$13 million in excess coverage. Defendant removed the matter to the District Court based on diversity jurisdiction. The court examined the amount in controversy upon Plaintiff's motion to remand.

In actions where no specific damages are alleged, the removing defendant must establish the amount in controversy exceeds \$75,000.00. If the claim is not measurable in monetary damages, it fails to meet the jurisdictional test of the amount in controversy. Where, as in *James River*, injunctive relief is sought, the value of the object of the underlying litigation determines the amount in controversy. This determination may be made upon either what Plaintiff may gain or what Defendant may lose. Here, Plaintiff sought the production of Defendant's claim adjustment file. While the contents of that file could potentially lead to another lawsuit wherein the amount in controversy requirement is met, the only monetary damage at stake here was the cost of reproducing the file. Thus, the amount in controversy was not satisfied and the case was remanded.

In *Owners Insurance Company v. Cruz Accessories, a/k/a H&C Corp, et al*, 2018 WL 902290, the court examined the amount in controversy in a declaratory judgment action. As in cases where the complaint lacks a claim for specific damages, the amount in controversy is determined by the object of the litigation; it is determined by the economic impact of the declaratory judgment upon either party.

Here, Cruz was sued for an alleged copyright infringement and unfair competition. Owners sought a declaratory judgment that the claims against Cruz were not covered. In support of its motion to dismiss, Cruz argued the court lacked jurisdiction as the value of the underlying litigation was measured by the revenue from the alleged copyright infringement, which was well below the jurisdictional requirement. Rejecting that argument as a misconstruction of the essential calculation of the amount in controversy, the court clarified that in a declaratory judgment action the amount in controversy is the value of the underlying litigation in addition to the cost of defending that action.

Practitioners will certainly encounter cases in which the complaint fails to set forth a specific amount of damages or those wherein the relief sought is a declaratory judgment or other equitable relief. In such instances, *James River* and *Cruz* provide a foundation for a thorough analysis of how the amount in controversy may be calculated in order to establish diversity jurisdiction.

Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.