

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CRAIG LETT,	:	March Term, 2003
Plaintiff,	:	
v.	:	No. 0874
PROGRESSIVE CASUALTY	:	
INSURANCE COMPANY and	:	Commerce Program
MOUNTAIN LAUREL ASSURANCE	:	
COMPANY and PROGRESSIVE	:	Control Number 100641
NORTHERN INSURANCE COMPANY	:	
and PROGRESSIVE INSURANCE	:	
COMPANY and PROGRESSIVE	:	
INSURANCE CORPORATION and	:	
PROGRESSIVE INSURANCE,	:	
Defendants.	:	

ORDER

AND NOW, this 18th day of December , 2003, upon consideration of Plaintiff's Motion for Approval of Settlement of Plaintiff's Claims and Discontinuance of Proposed Class Action Without Prejudice, Defendants' response, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion being filed of record, it is hereby **Ordered** and **Decreed** that a hearing and oral argument regarding Plaintiff's motion shall be held on _____ in court room 676 City Hall, Philadelphia, Pennsylvania.

BY THE COURT,

C. DARNELL JONES, II. J.

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PROGRESSIVE INSURANCE,	:	
Defendants.	:	

MEMORANDUM OPINION

Presently before this court is Plaintiff Craig Lett's Motion for Approval of Settlement of Plaintiff's Claims and Discontinuance of Proposed Class Action Without Prejudice. For the reasons that follow, the court is issuing a contemporaneous order for a hearing on the motion.

BACKGROUND

Craig Lett, the proposed class representative, owned a 2000 Honda Civic insured under Progressive Policy number 58062612-0 with an effective policy period of October 23, 2001 through April 23, 2002. The policy included a comprehensive loss benefit equal to the vehicle's actual cash value, less a \$500.00 deductible.

On or about December 27, 2001, Lett discovered that his aforesaid Honda Civic had been stolen, and he reported the theft to the Philadelphia Police and to Progressive. By letter dated February 27, 2002, Progressive denied Lett's claim on the grounds that he had misrepresented the garaging address information in this application

for motor vehicles insurance coverage. Progressive also attempted to rescind and/or cancel Lett's insurance policy effective the day after the loss, and mailed a check to him representing partial return of the premium.

Lett, the proposed class representative, alleges that each member of the proposed class made a comprehensive loss claim against Progressive for a loss that occurred after the expiration or the cancellation, rescission and /or incontestability period created by statute, regulation or common law. Lett also alleges on behalf of the class that on or after February 1999, Progressive denied each proposed class member's claim on the grounds that the proposed class member/insured had provided erroneous and/or fraudulent garaging information to Progressive.

Plaintiff alleges a breach of contract claim (Count I), bad faith claim (Count II) and violations of the Unfair Trade Practices and Consumer Protection Law, 73 Pa. C. S. A. § 201-1 et. seq. and the Pennsylvania Unfair Insurance Practices Act, 40 Pa. C.S. A. § 1171 et. seq.

Lett and the defendants have agreed to a settlement of Lett's individual claims. At this time, Lett has not moved for class certification and plaintiff's counsel has not engaged in any activities intended to inform members of the proposed class of the existence of this proposed class action. Plaintiff's counsel cannot substitute a class representative for Lett.

Lett moves this court to enter an order permitting him to enter into a settlement of his individual claims with defendants and to discontinue the class action without prejudice. Defendants join plaintiff in the Motion for Approval of the Settlement and Discontinuance of the case without prejudice.

DISCUSSION

Under Pennsylvania Rule of Civil Procedure 1714, a class action suit may not be discontinued without the approval of the court. Smalls v. Gary Barbera's Dodgeland, 2001 WL 1807869 (Pa. Com. Pl. 2001)(Herron) (citing Rule 1714(a)). If dismissal is made prior to certification, the action may be discontinued without notice to potential class members "if the court finds that the discontinuance will not prejudice the other members of the class." Id (quoting Rule 1714(b)). The purpose of this procedure is "to protect putative members of the class from prejudicial and binding action by the representative party(s)." Id.

Rule 1714(b) gives significant responsibility to a court: "[t]he court should conduct a careful inquiry before approving a request for discontinuance before certification. It should not be treated as a perfunctory matter. This is essential because the court has the responsibility to enter a finding that there will be no prejudice to other members of the class." Id(quoting Rule 1714 Explanatory Note—1987).

The trial court has an affirmative duty to conduct a hearing and make a finding that a discontinuance will not prejudice members of the class, which finding must be factually based. Such a determination cannot be made pro forma. Silver Spring Twp., 149 Pa. Commw. 320, 321 613 A.2d 108, 112 (Pa. Commw. 1992).

To comply with its Rule 1714 obligations, the court is scheduling a hearing on the Motion for 9:30 a.m. in Courtroom 676 City Hall. At that

time, plaintiff may present evidence that the settlement of plaintiff's claim and the discontinuance of the proposed class action without prejudice should be granted.

BY THE COURT,

C. DARNELL JONES, II, J.

Dated: December 18, 2003