

# Ninth Circuit: Face Amount Controls Amount-in-Controversy Questions Where Policy's Validity is Disputed

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In March, the Ninth Circuit provided clarity on a key and recurring issue relevant to a district court's ability to exercise subject matter jurisdiction in actions involving the validity of life insurance policies. On review of a summary judgment grant for the insurer, the court evaluated, *sua sponte*, whether the California federal district court that dismissed the action had subject matter jurisdiction. The case, *Elhouty v. Lincoln Benefit Life Company*, had landed in federal court as a result of the defendant's removal. The Ninth Circuit recognized that, while the parties were completely diverse, as 28 U.S.C. §1332(a) requires, "the contours of our amount in controversy jurisprudence are not entirely clear."

The dispute and the plaintiff's action for declaratory judgment focused on whether the plaintiff's Lincoln Benefit life insurance policy "remained in full force and had not lapsed," or had lapsed due to the plaintiff's failure to pay the requisite policy premiums, even after notice. But the court distinguished the case before it from those where the dispute centers on whether the plaintiff owed the insurer some amount of money or the insurer owed the policyholder particular policy benefits. Rather, because "this case concerns whether the policy remains in force or was instead properly terminated," the case is "one where the controversy relates to the validity of the policy" itself.

Citing decisions by multiple other Federal Courts of Appeal, the Ninth Circuit recognized "it is long-established that in declaratory judgment actions about whether an insurance policy is in effect or has been terminated, the policy's face amount is the measure of the amount in controversy." Thus, concluded the court, where Mr. Elhouty's policy had a \$2 million face amount, "that sum reflected the "value of the matter in controversy," and the district court's exercise of subject matter jurisdiction was proper.

*Elhouty* may also merit review for the court’s ruling that the district court did not abuse its discretion in striking the plaintiff’s expert witness, where, in addition to procedural failings (the plaintiff missed the deadline for disclosing expert reports and failed to timely respond to the defendant’s motion to strike), the plaintiff failed to “show[ ] how an expert opinion could help his case.”

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