

mission of Maryland and respondent, Alfred L. Scanlan, Jr., to suspend the respondent from the practice of law for a period of six (6) months effective November 24, 1997, and ending May 25, 1998, it is this 15th day of October, 1997

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, GRANTED, and it is further

ORDERED that respondent, Alfred L. Scanlan, Jr., is hereby suspended from the practice of law in the State of Maryland for a period of six (6) months, effective November 24, 1997 and ending May 25, 1998, and it is further

ORDERED that the Clerk of this Court shall strike the name of Alfred L. Scanlan, Jr. from the register of attorneys, and pursuant to Maryland Rule 16-713, shall certify that fact to the Trustees of the Clients' Security Trust Fund and the clerks of all judicial tribunals in the State.



347 Md. 415

Paul A. HUBER

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY.

No. 128, Sept. Term, 1996.

Court of Appeals of Maryland.

Oct. 16, 1997.

Insureds who were injured in accident while riding in one of their two insured vehicles brought suit for declaratory judgment and damages against underinsured motorist (UIM) carrier whose policy contained different UIM limits for two vehicles insured. The Circuit Court, Baltimore County, J. Norris Byrnes, J., entered declaratory judgment that lower set of limits applied to accident and certified judgment as final for purpose of appeal. The Court of Special Appeals af-

firmed declaratory judgment. Insureds petitioned for writ of certiorari. The Court of Appeals, Karwacki, J., held that claim for declaratory relief and various claims for monetary damages against insurer constituted only one claim, such that declaratory judgment could not be certified as final for appeal under rule requiring that certified judgment be dispositive as to entire claim or party.

Judgment vacated; case remanded to Court of Special Appeals with directions.

1. Appeal and Error ⇐366

To certify partial judgment as final for purposes of appeal, judgment must be dispositive as to an entire claim or party. Md. Rule 2-602(b).

2. Appeal and Error ⇐366

Where claimant presents a number of legal theories, but will be permitted to recover on one of them at most, he or she has but single claim for relief for purposes of rule that partial judgment must be final as to entire claim or party before judgment may be certified as final for purpose of appeal. Md. Rule 2-602(b).

3. Appeal and Error ⇐76(1)

Until all of issues in single claim are resolved none of decisions as to certain aspects of the claim can be entered as final judgments and become appealable. Md. Rule 2-602(b).

4. Appeal and Error ⇐80(6)

In action for monetary damages, order that resolves liability issues but does not determine amount of damages cannot be made final and appealable. Md. Rule 2-602(b).

5. Declaratory Judgment ⇐392.1

Declaratory judgment determining maximum limits of underinsured motorist (UIM) coverage under policy was not eligible for certification as final for appeal where actual amount of damages suffered by insureds had not been decided; count for declaratory relief and counts seeking damages on various theories constituted only one claim under requirement that judgment must be dispositive

as to entire claim or party to be eligible for immediate appeal. Md.Rule 2-602(b).

Andrew Janquitto (Mudd, Harrison & Burch), on brief; (J. Michael Lawlor, on brief), Towson, for petitioner.

Angus R. Everton (Mason, Ketterman & Morgan), on brief, Baltimore, for respondent.

Argued before BELL, C.J., ELDRIDGE, RODOWSKY, CHASANOW, and RAKER, JJ., and ROBERT L. KARWACKI and MARVIN H. SMITH, JJ. (retired), Specially Assigned.

ROBERT L. KARWACKI, Judge,
Retired, Specially Assigned.

We issued a writ of certiorari to the Court of Special Appeals in order to review that court's affirmation of a declaratory judgment entered by the Circuit Court for Baltimore County. At issue is the proper construction of the provisions of an automobile liability policy issued by Nationwide Mutual Insurance Company ("Nationwide"), the Respondent, to Paul A. Huber, the Petitioner, relating to uninsured/underinsured motorist coverage. We will be unable to reach the merits of this controversy, however, because the Court of Special Appeals was without jurisdiction to consider the appeal for the reasons we now explain.

Paul Huber, and his wife Agnes, were involved in a motor vehicle accident on April 7, 1990, with an uninsured/underinsured motor vehicle operated by Alberto Arroyo. Agnes Huber was killed and Paul Huber suffered serious injuries. At the time of the accident, Paul Huber maintained an automobile liability insurance policy with Nationwide covering two vehicles, a 1987 Dodge Dakota and a 1982 Oldsmobile Cutlass.

According to the declaration page of the insurance policy, the 1987 Dodge Dakota had uninsured/underinsured motorist coverage limits of \$100,000 per person and \$300,000 per occurrence. By contrast, the 1982 Oldsmobile Cutlass had uninsured/underinsured

motorist coverage limits of \$500,000 per person and \$500,000 per occurrence. The Hubers were occupying the 1987 Dodge Dakota at the time of the accident.

Petitioner filed suit individually and as personal representative of the estate of Agnes Huber. On January 31, 1991, the original complaint was filed against Diane Arroyo, the personal representative of Alberto Arroyo, deceased and Erika Koch Arroyo,¹ seeking damages for personal injuries and wrongful death. Petitioner later filed a supplemental complaint adding Nationwide as a defendant and adding counts on a theory of breach of contract. Still later, a second supplemental complaint was filed adding Solomon N. Hoke, an insurance agent/broker, as a defendant in counts based on theories of breach of contract, negligent misrepresentation and professional negligence. The second supplemental complaint also added the same additional counts against Nationwide.

Finally, Petitioner filed a third supplemental complaint containing only one additional count seeking a declaratory judgment as to the rights and liabilities of the parties pursuant to the uninsured/underinsured provisions of the automobile insurance policy Nationwide had issued to the Petitioner. On June 20, 1995, Petitioner filed a motion for summary judgment on the issue of whether the Nationwide policy provided \$500,000 per person and \$500,000 per occurrence of uninsured/underinsured motorist protection for the April 7, 1990 automobile accident. Petitioner contended that he was entitled to the highest uninsured/underinsured motorist limits available under his insurance policy regardless of which vehicle he was occupying at the time of the accident.

Nationwide opposed the motion and filed a cross motion for partial summary judgment. Nationwide argued that in order for the Petitioner to be entitled to the higher coverage he had to be occupying the specific vehicle for which the higher limits were provided on the declaration page. Therefore, according to Nationwide, Petitioner was only entitled to \$100,000 per person and \$300,000 per occur-

1. The claims against Diane Arroyo and Erika Arroyo were settled, and Nationwide was a party

to that settlement.

rence of uninsured/underinsured motorist coverage as stated on the declaration page for the 1987 Dodge Dakota.

The trial court pursuant to Maryland Rule 2-503(b) ordered a separate trial of the declaratory judgment claim of Petitioner against Nationwide. After oral argument on the motions for summary judgment, the court entered judgment declaring that Petitioner was only entitled to uninsured/underinsured coverage of \$100,000 per person and \$300,000 per occurrence. Finding that there was no just reason for delay, the trial court purported to certify that judgment as final pursuant to Md. Rule 2-602(b). Petitioner filed a timely appeal, and in an unreported opinion the Court of Special Appeals affirmed the circuit court's declaratory judgment.

As we have previously held, "[t]he jurisdiction of this Court, and the Court of Special Appeals, is determined by constitutional provisions, statutory provisions and rules; jurisdiction cannot be conferred by consent of the parties." Therefore, "this Court will dismiss an appeal *sua sponte* when it notices that appellate jurisdiction is lacking." *Biro v. Schombert*, 285 Md. 290, 293, 402 A.2d 71, 73 (1979), quoting *Smith v. Taylor*, 285 Md. 143, 147, 400 A.2d 1130 (1979) and *Eastgate Associates v. Apper*, 276 Md. 698, 700-01, 350 A.2d 661 (1976).

[1] We are unable to reach the merits of this appeal because the Court of Special Appeals lacked jurisdiction to hear the appeal in the first instance. Because the trial court's certification of the declaratory judgment in favor of Nationwide as a final judgment pursuant to Md. Rule 2-602(b) was improper, the Court of Special Appeals should have dismissed Petitioner's appeal. Md. Rule 2-602(b) provides, in relevant part:

"(b) When Allowed.—If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:

2. Rule 2-602(b)(2) provides as follows:
"(2) pursuant to Rule 2-501(e)(3), for some but less than all of the amount requested in a claim seeking money relief only."

(1) as to one or more but fewer than *all of the claims* or parties; or . . ." (Emphasis added).²

The plain language of the rule requires as a condition precedent to any appeal, that the judgment must be dispositive as to an entire claim or party before it may be certified as final and appealable. *Shenasky v. Gunter*, 339 Md. 636, 638, 664 A.2d 882, 883 (1995). *Diener Enterprises v. Miller*, 266 Md. 551, 554-55, 295 A.2d 470, 473 (1972).

[2] The Petitioner's complaint and supplemental complaints contain ten separate counts against Nationwide. Although these counts are based on different legal theories, the Petitioner can only recover a single award of monetary damages based on the facts alleged. Thus, the aggregate of the counts/complaints constitute only one claim upon which relief can be granted. This court has held that where, as here, a claimant presents a number of legal theories, but will be permitted to recover on one of them at most, he or she has but a single claim for relief. *Medical Mutual v. Evander*, 331 Md. 301, 310, 628 A.2d 170, 174 (1993). *Diener Enterprises v. Miller*, 266 Md. 551, 556, 295 A.2d 470, 473 (1972). See also, *Biro v. Schombert*, 285 Md. at 295, 402 A.2d at 74. (Different legal theories for the same recovery based upon the same facts or transaction do not give rise to separate claims under this rule.)

In addition, each count is based on the same factual allegations as recognized by the Petitioner in incorporating all previous allegations in each subsequent count. The issue as to the liability of Nationwide pursuant to the automobile insurance policy arose as a result of the single motor vehicle accident. The rights and responsibilities of the parties under each count spring from one document, the automobile insurance policy issued by Nationwide, and there is but one recovery requested. As we held in *Medical Mutual*, multiple counts based upon the same facts or circumstances but asserting different legal theories upon which the plaintiff may recover

This part of the rule is inapplicable to the analysis because the trial court did not enter judgment for any monetary amount.

the same damages, constitute one claim. *Id.*, 331 Md. 301, 310, 628 A.2d 170, 174 (1993). See *Diener Enterprises v. Miller*, *supra*, 266 Md. at 556, 295 A.2d at 473 (“[t]he existence of multiple claims ultimately depends upon whether the ‘aggregate of the operative facts’ presented states more than one claim which can be separately enforced”).

The only relief sought by Petitioner in his complaint and the first two supplemental amended complaints was monetary damages. The Petitioner’s third supplemental complaint contained only one count seeking a declaratory judgment as to the applicable insurance limits. Although the end result of a declaratory judgment is a decision, answering a question as a matter of law, the declaration can not be classified as different relief requested thus giving rise to a separate claim. The effect of the declaration is simply to establish the maximum amount of money that may be recovered in the claim. As we recognized in *Medical Mutual*, 331 Md. at 312–13, 628 A.2d at 175–76, even if the remedies requested under different legal theories are not exactly identical, if they are based on the same facts or circumstances, the difference in remedies does not automatically give rise to different claims. In fact, our cases have clearly recognized that the disposition of an entire count or the ruling on a particular legal theory does not mean, in and of itself, that an entire claim has been resolved. See also *Biro v. Schombert*, 285 Md. at 295, 402 A.2d at 74. (“The partial summary judgment decided only one of the two items of damages sought . . . [t]he cases make it clear that such a decision does not dispose of a ‘claim for relief’ and thus cannot be made final under the rule”.)

[3] The foregoing analysis was applied in *East v. Gilchrist*, 293 Md. 453, 445 A.2d 343 (1982). In that case, a suit was brought by taxpayers seeking a declaratory judgment that a particular section of the Montgomery County Code was valid and that the County was in violation of it. Montgomery County counterclaimed and obtained a declaratory judgment as to the code section in question. The trial court held that the relevant section was invalid. The trial court determined that there was no just reason for delay and or-

dered that the judgment be entered as final. The plaintiffs were also seeking a monetary judgment based on the purported violation of the code section as well as declaratory, mandamus, monetary and injunctive relief based on other alleged violations of state law. The plaintiffs appealed to the Court of Special Appeals and before any proceedings in that court, we granted certiorari. We dismissed the appeal because the other prayers for relief had not been decided and, therefore, there was no adjudication of an entire claim. The facts of the present case are very similar in that the declaratory judgment appealed from stems from a case wherein other legal issues remain open and a monetary award has not been decided. Until all of the issues in a single claim are resolved none of the decisions as to certain aspects of the claim can be entered as final judgments and become appealable. See *Washington Sub. San. Comm’n v. Frankel*, 302 Md. 301, 487 A.2d 651 (1985). (Involving an appeal from a declaratory judgment where issues relating to monetary damages had not been resolved. Appeal was vacated because there was no adjudication of an entire claim.)

[4, 5] The declaratory judgment of the trial court in favor of Nationwide established that the Petitioner was only entitled to the limits for the specific vehicle he was occupying at the time of the accident as those limits are stated on the declaration page of the insurance policy. Accordingly, the trial court held that the maximum amount of damages Petitioner could receive under his coverage for uninsured/underinsured motorist was \$100,000 per person and \$300,000 per occurrence as stated for the 1987 Dodge Dakota. Although the court’s order resolved the issue as to the limits of liability under the Nationwide insurance policy, the issue as to the actual amount of damages had not yet been decided. This Court has held that in an action for monetary damages an order that resolves liability issues but does not determine the amount of damages cannot be made final and appealable under Md. Rule 2–602(b). *Shenasky v. Gunter*, 339 Md. 636, 638–39, 664 A.2d 882, 883 (1995).

There is a well-established policy against piecemeal appeals in our judicial system as

they are not consistent with efficient judicial administration. *Medical Mutual v. Evander*, 331 Md. at 313, 628 A.2d at 176.

JUDGMENT VACATED; CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH THE DIRECTION TO DISMISS THE APPEAL. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE PETITIONER.



347 Md. 423

Vincent Tito GRECO, Jr.

v.

STATE of Maryland.

No. 131, Sept. Term, 1996.

Court of Appeals of Maryland.

Oct. 16, 1997.

After defendant's convictions for first-degree premeditated murder, felony murder, and first-degree rape were affirmed, the Circuit Court, Baltimore County, Paul E. Alpert, J., granted defendant's motion to modify sentence. Within 90 days of that decision, defendant filed another motion for reduction of sentence, and the Circuit Court denied motion. Defendant appealed. On grant of certiorari on its own motion, the Court of Appeals, Raker, J., held that reimposition of sentence subsequent to reduction in original sentence was an "imposition" of sentence for purposes of filing second motion for reduction of sentence.

Reversed and remanded.

1. Criminal Law §996(2)

Reimposition of sentence subsequent to reduction in original sentence was an "imposition" of sentence for purposes of filing second motion for reduction of sentence, and thus, when sentencing court granted timely

request for modification or reduction of sentence, defendant could file another request for modification or reduction of sentence within 90 days of date of subsequent imposition of sentence even though it was filed more than 90 days after original imposition of sentence. Md.Rule 4-345(b).

See publication Words and Phrases for other judicial constructions and definitions.

2. Courts §85(2)

To interpret rules of procedure, court uses same principles and canons of construction as are used to interpret statutes.

3. Courts §85(2)

When construing rule, court first looks to text of rule, giving those words their ordinary and natural meaning; when words are clear and unambiguous, ordinarily court's inquiry ends.

4. Courts §85(2)

When language of rule is ambiguous, court looks elsewhere to discern legislative intent, and it then becomes necessary to survey surrounding circumstances in which rule was drafted to accurately discern intent of Court of Appeals in promulgating that rule.

5. Criminal Law §996(3)

Once defendant files motion for reconsideration of sentence within mandatory 90 day period, trial court can act on that motion at any time. Md.Rule 4-345(b).

Howard L. Cardin (Cardin & Gitomer, P.A., on brief), Baltimore, for appellant.

Regina Hollins Lewis, Asst. Atty. General (J. Joseph Curran, Jr., Atty. General, on brief), Baltimore, for appellee.

Argued before BELL, C.J., ELDRIDGE, RODOWSKY, CHASANOW, RAKER and WILNER, JJ., and KARWACKI, J. (retired), Specially Assigned.

RAKER, Judge.

Maryland Rule 4-345 governs the power of Maryland trial courts to revise a sentence in a criminal case. Subsection (b) of the Rule