

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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JERROLD BRAD HUDSON,

Plaintiff,

vs.

DIVERS ALERT NETWORK and CONNECTICUT  
GENERAL LIFE INSURANCE COMPANY d/b/a/  
CIGNA HEALTHCARE,

Defendants.

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**No. 4:08-cv-00036-JEG**

**ORDER**

This matter is before the Court on Defendant Divers Alert Network's (DAN) Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and Plaintiff Jerrold Brad Hudson's (Hudson) Motion for Leave to file Amended Complaint. Hudson resists DAN's motion to dismiss. Defendant Connecticut General Life Insurance Company d/b/a CIGNA Healthcare (CIGNA) has not joined in DAN's motion. The parties have not requested a hearing, and the Court finds no hearing is necessary for the resolution of these motions. The matter is fully submitted and ready for disposition.

**I. SUMMARY OF MATERIAL FACTS**

On January 23, 2008, Hudson filed a Complaint against DAN and CIGNA alleging bad faith, breach of contract, and requesting a declaratory judgment against DAN and CIGNA. Therein, Hudson alleges he became ill during a trip to Argentina, was medically evacuated to the United States for treatment, and Defendants failed to pay for the evacuation.

Hudson's complaint alleges that Hudson maintains a primary place of residence in Des Moines, Iowa, and that DAN and CIGNA regularly sell insurance within the state of Iowa. The caption of Hudson's complaint lists the parties' addresses and includes a post office box in

Des Moines, Iowa, for Hudson; and it lists North Carolina and Connecticut addresses for Dan and CIGNA, respectively.

On March 18, 2008, DAN filed this pre-answer motion to dismiss asserting Hudson failed to properly plead diversity jurisdiction in his complaint and contends an allegation of residence is insufficient to establish Hudson's citizenship. DAN also asserts Defendants' citizenships are unknown because Hudson does not allege either Defendant is headquartered or incorporated in any state.

On March 27, 2008, Hudson filed a motion to file an amended complaint. The proposed amended complaint again lists a post office box as Hudson's address and adds the following:

1. Plaintiff, Brad Hudson maintains a primary place of residence in Des Moines, Iowa.
2. Defendant, Diver's Alert Network ("DAN") is an insurance provider incorporated in North Carolina with its primary place of business in Durham, North Carolina which regularly sells insurance, including within the state of Iowa.
3. Defendant, CIGNA is an insurance provider incorporated in Connecticut with its principal place of business in Hartford, Connecticut which is licensed and regularly selling withing the state of Iowa.

Pl.'s Am. Compl. CIGNA answered the complaint on April 10, 2008.

## **II. DISCUSSION**

Federal courts are courts of limited jurisdiction. Nolles v. State Comm. for Reorganization of Sch. Dists., 524 F.3d 892, 897 (8th Cir. 2008). "Subject-matter jurisdiction is a threshold matter that a plaintiff must establish. A plaintiff risks dismissal when the pleadings fail to state grounds regarding the Court's jurisdiction." Rasidescu v. Univ. of Minn., No. 04-4066, 2005 WL 1593042, at \*1 (D. Minn. July 1, 2005), aff'd, 190 F. App'x 524 (8th Cir. 2006) (unpublished per curiam) (citing Sheehan v. Gustafson, 967 F.2d 1214, 1215 (8th Cir. 1992) (internal

citations omitted)). “Federal court diversity jurisdiction of state law claims requires an amount in controversy greater than \$75,000 and complete diversity of citizenship among the litigants. Complete diversity of citizenship exists where no defendant holds citizenship in the same state where any plaintiff holds citizenship.” OnePoint Solutions, LLC v. Borchert, 486 F.3d 342, 346 (8th Cir. 2007) (internal citations omitted). Thus, the core issue is citizenship.

DAN asserts Hudson failed to properly plead the essential element of diversity jurisdiction. Similarly, in Rasidescu v. University of Minnesota, the plaintiff filed a complaint in federal court alleging various state law causes of action against various defendants and asserting federal jurisdiction based on diversity of citizenship. Rasidescu, 2005 WL 1593042, at \*1. The defendants moved to dismiss based on lack of subject matter jurisdiction. Id. In granting defendant’s motion, Judge Tunheim explained, “[t]he distinction between residence and citizenship is well settled, and mere residence in a particular state is insufficient to determine citizenship.” Id. (citing Sanders v. Clemco Indus., 823 F.2d 214, 216 (8th Cir. 1987)). More specifically, that court noted, “[c]itizenship is synonymous with domicile. Domicile requires (1) presence in a purported state, and (2) the intention to remain in that state indefinitely.” Id. (citation omitted). Because, as in the present case, the Rasidescu plaintiff listed a post office box as his address, the district court opined, “[g]eneral allegations of residence, such as listing a post office box . . . are insufficient to establish citizenship.” Id. (citing Martinez v. Martinez, 62 Fed. App’x 309, 313-14 (10th Cir. 2003) (unpublished)). The Eighth Circuit affirmed without comment. Rasidescu, 190 Fed. App’x 524 (8th Cir. 2006).

Procedurally, the facts of the present case are indistinguishable from Rasidescu. Hudson asserts he “maintains a primary residence in Des Moines, Iowa,” and lists a post office box for his address. The Court finds, as did the Rasidescu district court, that Hudson’s mere assertion of

a residence in Iowa, primary or otherwise, and listing of a post office box in Des Moines, Iowa, is insufficient to establish Hudson is a citizen of this state. Furthermore, Hudson has not produced any additional evidence of his presence in the state of Iowa or his intention to remain in Iowa indefinitely. The Court concludes Hudson's complaint fails to demonstrate this Court has subject matter jurisdiction.

Hudson requests the Court's permission to amend his complaint in order to cure the jurisdictional defect. "A district court should freely give leave to a party to amend its pleading when justice so requires; however, it may properly deny a party's motion to amend its complaint when such amendment would . . . be futile." McAninch v. Wintermute, 491 F.3d 759, 766 (8th Cir. 2007) (internal citation omitted); see Fed. R. Civ. P. 15(a). Here, although Hudson's proffered amended complaint appears to correct the defect as to the citizenship of Defendants, it fails to cure the defect regarding Hudson's citizenship. The amended complaint again lists a post office box as Hudson's address and does not include evidence of Hudson's presence in the state of Iowa, nor does the proffered amended complaint assert Hudson intends to remain in Iowa indefinitely. Given the current posture of the dispute between the parties, it is striking that Hudson avoids even the conclusory claim of citizenship in Iowa. Therefore, the Court concludes permitting an amendment would be futile. See Williams v. Little Rock Mun. Water Works, 21 F.3d 218, 224-25 (8th Cir. 1994).

The Court recognizes CIGNA did not join in DAN's motion to dismiss and has answered the complaint.<sup>1</sup> Nonetheless, because subject matter jurisdiction cannot be waived by the parties

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<sup>1</sup> No motion is necessary. "[E]very federal court 'has a special obligation to consider its own jurisdiction' and raise sua sponte jurisdictional issues 'when there is an indication that jurisdiction is lacking, even if the parties concede the issue.'" See Thompson v. United Transp. Union, No. 07-cv-222, 2007 WL 3431304, at \*3 (N.D. Iowa Nov. 15, 2007) (citing Thomas v.

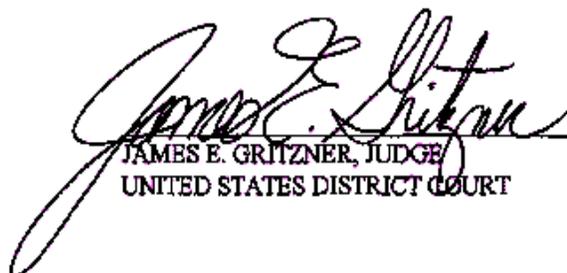
or ignored by the Court, see Bhd. of Maint. of Way Employees Div. of Int'l Bhd. of Teamsters v. Union Pac. R.R. Co., 475 F. Supp. 2d 819, 830-31 (N.D. Iowa 2007), and because the Court concludes Hudson failed to adequately assert a factual basis to support diversity jurisdiction, the Court must dismiss the matter in its entirety pursuant to 28 U.S.C. § 1332.

### III. CONCLUSION

For the foregoing reasons, Divers Alert Network's Motion to Dismiss (Clerk's No. 8) is **granted**, and Hudson's Motion for Leave to file Amended Complaint (Clerk's No. 11) is **denied**. The above-entitled action is **dismissed** without prejudice.

**IT IS SO ORDERED.**

Dated this 16th day of June, 2008.



JAMES E. GRITZNER, JUDGE  
UNITED STATES DISTRICT COURT

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Basham, 931 F.2d 521, 522-23 (8th Cir. 1991)). The issue may be raised by the Court at any time. GMAC Commercial Credit LLC v. Dillard Dep't Stores, Inc., 357 F.3d 827, 828 (8th Cir. 2004).