

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 18-cv-00714-PAB

DONNA M. SANDS and
ROBERT C. SANDS,

Plaintiffs,

v.

INTEGON NATIONAL INSURANCE COMPANY,

Defendant.

ORDER TO SHOW CAUSE

The Court takes up this matter *sua sponte* on defendant's Notice of Removal [Docket No. 1]. Defendant states that the Court has subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a). Docket No. 1 at 3, ¶ 8.

In every case and at every stage of the proceeding, a federal court must satisfy itself as to its own jurisdiction, even if doing so requires *sua sponte* action. See *Citizens Concerned for Separation of Church & State v. City & County of Denver*, 628 F.2d 1289, 1297 (10th Cir. 1980). Absent an assurance that jurisdiction exists, a court may not proceed in a case. See *Cunningham v. BHP Petroleum Great Britain PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005). Courts are well-advised to raise the issue of jurisdiction on their own, regardless of parties' apparent acquiescence. First, it is the Court's duty to do so. *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988). Second, regarding subject matter jurisdiction, "the consent of the parties is

irrelevant, principles of estoppel do not apply, and a party does not waive the requirement by failing to challenge jurisdiction.” *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (internal citations omitted). Finally, delay in addressing the issue only compounds the problem if, despite much time and expense having been dedicated to the case, a lack of jurisdiction causes it to be dismissed. See *U.S. Fire Ins. Co. v. Pinkard Constr. Co.*, No. 09-cv-00491-PAB-MJW, 2009 WL 2338116, at *3 (D. Colo. July 28, 2009).

“The party invoking federal jurisdiction bears the burden of establishing such jurisdiction as a threshold matter.” *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004). Defendant asserts that this Court has diversity jurisdiction under 28 U.S.C. § 1332(a). Pursuant to that section, “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” 28 U.S.C. § 1332(a). The facts presently alleged are insufficient to establish the parties’ citizenship.

Defendant alleges that “[p]laintiffs are residents of the State of Colorado” and that defendant “is an insurance company registered in the State of North Carolina, with its principal office located” in North Carolina. Docket No. 1 at 3, ¶¶ 10-11. Defendant’s allegations are insufficient to establish diversity for several reasons. First, “allegations of mere ‘residence’ may not be equated with ‘citizenship’ for the purposes of establishing diversity.” *Whitelock v. Leatherman*, 460 F.2d 507, 514 (10th Cir. 1972). The relevant inquiry is where the parties are domiciled. See *Siloam Springs Hotel, LLC*

v. Century Sur. Co., 781 F.3d 1233, 1238 (10th Cir. 2015). Thus, for purposes of diversity jurisdiction, the residency of plaintiffs is not relevant. Second, it is unclear from the notice of removal what defendant means when it states that it is an “insurance company.” In order to properly assess defendant’s citizenship, the removing party must inform the Court of an entity’s form of organization – e.g., corporation, trust, limited partnership, limited liability company. Defendant must further identify its citizenship in accordance with the proper standards. For example, a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

Defendant’s allegations are presently insufficient to allow the Court to determine the citizenship of the parties or whether the Court has jurisdiction. See *United States ex rel. General Rock & Sand Corp. v. Chuska Dev. Corp.*, 55 F.3d 1491, 1495 (10th Cir. 1995) (“The party seeking the exercise of jurisdiction in his favor must allege in his pleading the facts essential to show jurisdiction.”) (citations and internal quotation marks omitted). Accordingly, it is

ORDERED that, on or before **5:00 p.m. on April 6, 2018**, defendant Integon National Insurance Company shall show cause why this case should not be dismissed due to the Court’s lack of subject matter jurisdiction.

DATED March 29, 2018.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge