

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

DISCOVER PROPERTY AND)
CASUALTY INSURANCE COMPANY,)

Plaintiff,)

v.)

CIMCO REFRIGERATION, INC.,)
and LARRY BURDETTE and)
NANCY VATCA, as Co-)
Administrators of the)
Estate of Nicholas T.)
Burdette, Deceased,)

Defendants.)

CIVIL ACTION NO.
2:10cv1011-MHT
(WO)

ORDER

The allegations of the plaintiff's complaint are insufficient to invoke this court's diversity-of-citizenship jurisdiction. The allegations must show that the citizenship of each plaintiff is different from that of each defendant. 28 U.S.C. § 1332.

The plaintiff's complaint fails to meet this standard. The plaintiff has sued two of the defendants in their capacities as personal representatives for the estate of a decedent. "[T]he legal representative of the

estate of a decedent shall be deemed to be a citizen only of the same State as the decedent" 28 U.S.C. § 1332(c)(2). Because the complaint does set forth the citizenship of the decedent, it does not adequately establish the ground for this court to assume jurisdiction of this matter.

In addition, an allegation that a party is a "resident" of a state is not sufficient to establish that a party is a "citizen" of that state. Delome v. Union Barge Line Co., 444 F.2d 225, 233 (5th Cir.), cert. denied, 404 U.S. 995 (1971). The plaintiff must be careful to set forth the citizenship, not just the residence, of the decedent.

It is therefore the ORDER, JUDGMENT, and DECREE of the court that the plaintiff has until December 20, 2010, to amend the complaint to allege jurisdiction sufficiently; otherwise this lawsuit shall be dismissed without prejudice.

DONE, this the 13th day of December, 2010.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE