

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9
10 Truck Insurance Exchange,

11 Plaintiff,

12 vs.

13 The Manitowoc Company, et al.,

14 Defendants.

No. CV-10-8191-PCT-PGR

ORDER

15
16 Defendant American Shizuki Corporation removed this action on October
17 10, 2010 solely on the basis of diversity of citizenship jurisdiction. In two prior
18 orders (Docs. 7 & 13), the Court ordered the removing defendant, who has the
19 burden of establishing that this Court has subject matter jurisdiction over this
20 action, to amend its notice of removal to provide additional information regarding
21 the citizenship of plaintiff Truck Insurance Exchange ("TIE") based on the Court's
22 serious concern as to whether TIE is in fact diverse from all of the defendants.
23 As the Court has made clear to the parties, the resolution of the jurisdictional
24 issue depends, in the first instance, on whether there is a legal basis for the
25 allegation in the Amended Notice of Removal of Civil Action (Doc. 8) that TIG is a
26 citizen of California because it is a California corporation with its principal place of

1 business in California, or whether it is instead an unincorporated association
2 under California law.

3 Rather than refuting the federal case law cited to it by the Court in its last
4 order (Doc. 13) which noted that TIG is an unincorporated association for
5 purposes of diversity jurisdiction, the removing defendant filed a Motion to
6 Continue Deadline and to Conduct Early Discovery (Doc. 14), wherein it requests
7 that it be allowed to take early discovery limited in part to “questions about TIE’s
8 legal structure, place of incorporation (as appropriate), principal place of
9 business, name and identity of each member of the unincorporated association
10 (as appropriate), and information related to the citizenship of each member.”¹

11 Leaving aside the fact that the removing defendant has conspicuously
12 failed to cite to any legal authority permitting it to take post-removal subject
13 matter jurisdiction-related discovery under the circumstances present here, the
14 Court concludes that its request to take jurisdictional-related discovery regarding
15 TIE’s legal structure is neither appropriate nor necessary because the Court finds
16 as a matter of law that TIE is an unincorporated association for purposes of
17 diversity of citizenship jurisdiction.²

18 1

19 The fact that TIG states in its response to the removing defendant’s
20 motion that it does not oppose the removal of this action is of absolutely no legal
21 relevance as it is axiomatic that “parties ... cannot create federal court subject
22 matter jurisdiction by stipulation.” Holman v. Laulo-Rowe Agency, 994 F.2d 666,
23 668 n.1 (9th Cir.1993); see *also*, United States v. Ceja-Prado, 333 F.3d 1046,
24 1049 (9th Cir.2003) (noting that a federal court has the independent obligation to
address sua sponte whether it has subject matter jurisdiction and that “courts
have not allowed jurisdiction to depend on either malfeasance or well-intentioned
agreement of the parties.”)

25 2

26 While the Court may have the discretion to allow some types of post-
removal jurisdictional discovery, it is certainly not required to permit it, see Abrego

1 First, the Court concludes, as set forth by TIG in its corporate disclosure
2 statement (Doc. 12), that TIE is a reciprocal or interinsurance exchange
3 organized pursuant to the California Insurance Code and that it is owned by its
4 subscribers or policyholders. Under California law, an interinsurance exchange is
5 not a corporation, Industrial Indemnity Exchange v. State Board of Equalization,
6 161 P.2d 222, 225 (Calif.1945), but is rather “an unincorporated business
7 organization of a special character in which the participants, called subscribers
8 (or underwriters) are both insurers and insureds[.]” Industrial Indemnity Co. v.
9 Golden State Co., 256 P.2d 677, 680 (Cal.App.1953). The California appellate
10 courts specifically recognize that TIE is an unincorporated association. See e.g.,
11 Ulwelling v. Crown Coach Corp., 206 Cal.App.2d 96, 129, 23 Cal.Rptr. 631, 650
12 (1962) (“Truck Insurance Exchange is an unincorporated association of policy
13 holders organized as an inter-insurance exchange[.]”); R&B Auto Center, Inc. v.
14 Farmers Group, Inc., 140 Cal.App.4th 327, 362, 44 Cal.Rptr.3d 426, 455 (2006)
15 (“Truck Insurance [Exchange] is a reciprocal or interinsurance exchange. ... An
16 interinsurance exchange is an unincorporated business organization made up of
17 subscribers and managed by an attorney-in-fact.”); Tran v. Farmers Group, Inc.,
18 104 Cal.App.4th, 1202, 1207 & 1210, 128 Cal.Rptr.2d 728, 731 & 733-34 (2002)

19
20 Abrego v. The Dow Chemical Co., 443 F.3d 676, 691 (9th Cir.2006) (noting that its
21 prior decisions do not indicate that subject matter jurisdiction-related discovery “is
22 *required*”) (emphasis in original), and the Court will deny the removing
23 defendant’s request that it be allowed at this time to “seek a certified copy of the
24 insurance policy under which TIE obtained its insurance rights, as the information
25 contained therein will be material in determining whether some subsidiary
26 corporate insurer is actually involved.” If that information was determinative of
this Court’s subject matter jurisdiction then the removing defendant should have
obtained it prior to removing this action on the basis of diversity jurisdiction. The
Court’s only concern at this time is whether it has diversity jurisdiction over this
action based on the parties currently before it.

1 (noting that Truck Insurance Exchange is a reciprocal insurer, also known as an
2 interinsurance exchange, and that an interinsurance exchange is an
3 unincorporated business organization.)

4 Second, federal courts considering the legal status of Truck Insurance
5 Exchange for diversity of jurisdiction purposes have also specifically found it to be
6 an unincorporated association. See e.g., Dally Properties, LLC v. Truck Insurance
7 Exchange, 2006 WL 2091151, at *1 (W.D.Wash.2006) (In remanding the action
8 for lack of diversity jurisdiction, court noted that “Truck [Insurance Exchange] is
9 not a ‘foreign corporation’ but rather an unincorporated association enjoying
10 citizenship in every state in which it has a subscriber[.]); Country Rock Cafe, Inc.
11 v. Truck Insurance Exchange, 417 F.Supp.2d 399, 402-03 (S.D.N.Y.2006) (Court,
12 in finding that it lacked diversity jurisdiction, determined that Truck Insurance
13 Exchange was an unincorporated association for diversity purposes); Adolph
14 Coors Co. v. Truck Insurance Exchange, 2005 WL 486580 (D.D.C. Feb. 28,
15 2005) (Court, relying on California law stating that reciprocal insurance
16 exchanges are unincorporated business organizations, remanded action removed
17 by Truck Insurance Exchange for lack of diversity jurisdiction because it found
18 that it was an unincorporated entity which was a citizen of the states in which its
19 members were citizens); Truck Insurance Exchange v. The Dow Chemical Co.,
20 331 F.Supp. 323, 324-25 (W.D.Mo. 1971) (Court, in dismissing the case for lack
21 of diversity jurisdiction, determined that the citizenship of Truck Insurance
22 Exchange was the citizenship of each of its members because it is “a reciprocal
23 insurance exchange composed of a number of members acting as an
24 unincorporated association.”)

25 Since the citizenship of an unincorporated association is the citizenship of
26

1 each of its members, the only remaining diversity-related issue of concern to the
2 Court at this time is whether TIG has any members who are citizens of Wisconsin
3 or Nebraska, which are the states of which the defendants are citizens. Since
4 TIG is owned by its subscribers, they are its members for purposes of
5 determining TIG's citizenship.³ In order to more speedily resolve this issue, and
6 in light of TIG's statement in its response to the removing defendant's motion that
7 "[i]f there is specific information that the Court needs beyond that contained in
8 TIE's corporate disclosure TIE will supply it[.]" the Court will require TIG to file an
9 affidavit or declaration with the Court from an appropriate official setting forth
10 whether, as of the time this action was commenced in state court, which was May
11 27, 2010, and as of the time this action was removed, which was October 1,
12 2010, any subscriber of TIG was a citizen of Wisconsin or Nebraska. See Themis
13 Lodging Corp. v. Erie Insurance Exchange, 2010 WL 2817251, at *1 (N.D. Ohio
14 July 16, 2010) (In dismissing an action for lack of diversity jurisdiction, the court
15 stated that courts make no legally significant distinction between a "subscriber" or
16 a "member" of a reciprocal insurance exchange, which it noted was an
17 unincorporated business organization, in determining the citizenship of the
18 exchange.) Therefore,

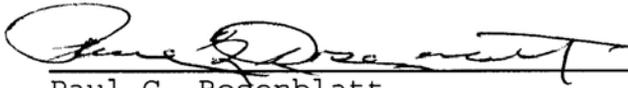
19 IT IS ORDERED that defendant American Shizuki Corporation's Motion to
20 Continue Deadline and to Conduct Early Discovery (Doc. 14) is granted solely to

21 _____
22 3

23 As the California Court of Appeals has explained in reference to the
24 subscribers of a reciprocal insurance exchange regulated by the California
25 Insurance Code, "[t]he subscribers furnish their premium deposits, the means
26 required for losses and costs, reserves and surpluses of the reciprocal insurance
of them all, and therefore are entitled to the equity in the assets of the Exchange
subject to the purpose for which they have furnished said means." Industrial
Indemnity Co. v. Golden State Co., 256 P.2d at 680.

1 the extent that plaintiff Truck Insurance Exchange shall no later than **noon on**
2 **December 15, 2010** file a notice with the Court, supported by the affidavit or
3 declaration of an appropriate official, setting forth whether any of its members
4 were citizens of Wisconsin or Nebraska as of the dates this action was
5 commenced in state court and was removed to this Court.

6 DATED this 1st day of December, 2010.

7
8 
9 Paul G. Rosenblatt
United States District Judge