

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 12-cv-02366-RPM

TRAC CHARITABLE REMAINDER TRUST,

Plaintiff,

v.

MICROSEISMIC, INC. and  
PETER M. DUNCAN, PH.D.,

Defendants.

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ORDER OF REMAND

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Pursuant to the conference held today and the plaintiff's motion for remand and supporting brief filed yesterday [7] and the exhibits filed in support of the motion to remand, it is apparent that the notice of removal filed in this court on September 5, 2012, [1] is untimely. One of the removing defendants, Microseismic, previously filed an action in the United States District Court for the Southern District of Texas, Houston Division, against Trac Charitable Remainder Trust and Charles B. Archambeau, based on allegations of diversity of citizenship. In that action the defendant Trac Charitable Remainder Trust filed a disclosure of interested parties on February 15, 2012, (Exhibit H), identifying the trustee of the trust, the income beneficiary and the contingent beneficiary. This action was first filed in the District Court of Boulder County, Colorado, on May 25, 2012, and the defendants filed a notice of removal based on diversity of citizenship on July 11, 2012, and on July 27, 2012, Judge Kreiger, *sua sponte*, entered an order of remand for the failure of the defendants to plead the citizenship of the trust. The defendants

claim that they first obtained information regarding the identities of the beneficiaries and trustees upon receipt of a letter from plaintiff's counsel on August 7, 2012. That is directly contradicted by the pleadings in the case filed in Texas which has now been dismissed for lack of *in personam* jurisdiction of the defendants there. Because it is clear that the defendants had adequate information more than thirty days before the filing of this second notice of removal, it is

ORDERED that this civil action is remanded to the District Court, Boulder County, Colorado.

DATED: September 11, 2012

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior District Judge