

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HARRY BAXTER, JEANNE BAXTER,
JENNIFER WEIL, and CLAIRE BAXTER
FITZGERALD, as beneficiaries of
KATHRYN BROOKE BAXTER,

Plaintiffs,

vs.

Case No. 2:11-cv-401-FtM-29DNF

THE PRUDENTIAL INSURANCE COMPANY OF
AMERICA, d/b/a SERVICEMEMBERS' GROUP
LIFE INSURANCE, and the UNITED
STATES DEPARTMENT OF VETERAN'S
AFFAIRS,

Defendants.

OPINION AND ORDER

This matter comes before the Court on review of the Case Management Report (Doc. #15). This case was filed in federal court on the basis of diversity of citizenship under Title 28, United States Code, Section 1332. (Docs. #17, #18.) Because the Amended Complaint (Doc. #18) fails to make sufficient allegations supporting subject matter jurisdiction, the Court will dismiss it with leave to file a second amended complaint.

Diversity jurisdiction requires complete diversity of citizenship, and that the matter in controversy exceed the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a); Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1261 (11th Cir. 2000). "In order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a

citizen of the United States and be domiciled within the State.” Newman-Green, Inc. v. Alfonso-Larrain, 490 U.S. 826, 828 (1989). Pleading residency is not the equivalent of pleading domicile. Molinos Valle Del Cibao, C. Por A. v. Lama, 633 F.3d 1330, 1342 n.12 (11th Cir. 2011); Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc., 561 F.3d 1294, 1297 (11th Cir. 2009); Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994). “A person’s domicile is the place of his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” McCormick v. Aderholt, 293 F.3d 1254, 1257-58 (11th Cir. 2002) (internal quotations and citations omitted). A corporation is a citizen of both the state of its incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). The principal place of business is determined by the “nerve center” test. Hertz Corp. v. Friend, 130 S. Ct. 1181, 1193 (2010). The Amended Complaint fails to make any allegations regarding the citizenship of any party, and will therefore be dismissed without prejudice and with leave to amend.

Accordingly, it is now


ORDERED:

1. The Amended Complaint (Doc. #18) is **DISMISSED WITHOUT PREJUDICE**. Plaintiffs may file a Second Amended Complaint within

TWENTY-ONE (21) DAYS of the date of this Opinion and Order setting forth a sufficient factual basis for the citizenship of each party.

2. The Court will defer entry of the Case Management and Scheduling Order pending the filing of the Second Amended Complaint.

DONE AND ORDERED at Fort Myers, Florida, this 5th day of October, 2011.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of record