

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>HOWARD JOHNSON INTERNATIONAL, ) INC., ) Delaware Corporation )  Plaintiff, )</b>	)	<b>CIVIL NO. 11 - 1094 - GPM</b>
<b>vs.</b>	)	
<b>CHEESOOK, LLC and KYO NAM CHEE )</b>	)	
<b>Defendants.</b>		

**MEMORANDUM AND ORDER**

**MURPHY, District Judge:**

The Court, on its own motion, has reviewed the complaint in the present case to determine whether it has subject matter jurisdiction. Under Federal Rule of Civil Procedure 12(h)(3), this Court is obligated to review its own jurisdiction *sua sponte*. See *Hammes v. AAMCO Transmissions, Inc.*, 33 F.3d 774, 778 (7<sup>th</sup> Cir. 1994) (“the court has an independent duty to satisfy itself that it has subject-matter jurisdiction”); see also *Ricketts v. Midwest Nat’l Bank*, 874 F.2d 1177, 1181 (7<sup>th</sup> Cir. 1989). In light of Seventh Circuit Court of Appeals opinions, see, e.g., *Smith v. American Gen’l Life and Accident Ins. Co.*, 337 F.3d 888 (7<sup>th</sup> Cir. 2003); *Tylka v. Gerber Prods. Co.*, 211 F.3d 445 (7<sup>th</sup> Cir. 2000); *America’s Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072 (7<sup>th</sup> Cir. 1992) (per curiam), this Court has undertaken a more rigorous initial review of complaints to ensure that jurisdiction has been properly pleaded.

Plaintiff filed this action under 28 U.S.C. § 1332; however Plaintiff’s jurisdictional allegations are woefully deficient. Allegation based upon “information and belief” are insufficient

to establish subject matter jurisdiction. *America's Best Inns, Inc.*, 980 F.2d at 1074. Although it seems likely Plaintiff will be able to establish jurisdiction by more appropriate allegations, "subject matter jurisdiction must be a matter of certainty and not of probabilities." *Murphy v. Schering Corporation*, 878 F. Supp. 124, 125-26 (N.D. Ill. 1995). Accordingly, Plaintiff is **ORDERED** to file an Amended Complaint **on or before 1/4/2012** to properly allege diversity of citizenship jurisdiction. Plaintiff's failure to cure the deficiencies in its pleading will result in dismissal of this action for lack of subject matter jurisdiction.

**IT IS SO ORDERED.**

DATED: December 21, 2011

*s/ G. Patrick Murphy*  
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G. PATRICK MURPHY  
United States District Judge