

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

ALLIANZ GLOBAL RISKS US INSURANCE)
COMPANY as Subrogee of TBT Aviation, LLC,)
And TBT Aviation, LLC,)

Plaintiffs,)

v.)

Case No.: 1:11-CV-081

GOSHEN AIR CENTER, INC., JUSTIN DALE,)
and RANDALL SHARKEY,)

Defendants.)

GOSHEN AIR CENTER, INC.,)

Third-Party Plaintiff,)

v.)

ESTLICK-GIRVIN & LEFEVER INSURANCE)
AGENCY d/b/a STAR INSURANCE,)

Third-Party Defendant.)

ESTLICK-GIRVIN & LEFEVER INSURANCE)
AGENCY d/b/a STAR INSURANCE AGENCY,)

Fourth-Party Plaintiff,)

v.)

ARLINGTON/ROE & CO., INC.,)

Fourth-Party Defendant.)

OPINION AND ORDER

On June 6, 2011, Defendants, and Third Party Plaintiffs, Goshen Air Center, Inc., Justin Dale, and Randall Sharkey (collectively, "Goshen Air Center") filed a Third Party Complaint

against Estlick-Girvin & Lefever Insurance Agency d/b/a Star Insurance Agency (“Star Insurance”). (Docket # 20.) Star Insurance filed an Amended Fourth Party Complaint, which is dependent on the Court having jurisdiction over the Third Party Complaint, against Fourth Party Defendant Arlington/Roe & Co., Inc. (“Arlington/Roe”) on July 20, 2011. (Docket # 31.)

On September 26, 2011, the Court entered an Opinion and Order observing that supplemental jurisdiction did not exist over Goshen Air Center’s claim against Star Insurance and Star Insurance’s claim against Arlington/Roe, but that the parties would be given one final opportunity, until October 11, 2011, to show otherwise. (Docket # 46.)

Although the Third Party Plaintiff, Goshen Air Center, subsequently filed a Motion to Dismiss its Third Party Complaint without prejudice on October 6, 2011 (Docket #47), no filings have been offered in opposition to the Court’s September 26, 2011, Opinion and Order.

Accordingly, for the reasons set out in the September 26, 2011, Opinion and Order, Goshen Air Center’s cause of action against Star Insurance and Star Insurance’s cause of action against Arlington/Roe and any associated counterclaims are hereby DISMISSED without prejudice pursuant to Federal Rule of Civil Procedure 12(h)(3) for lack of jurisdiction.¹ The Clerk is to show Estlick-Girvin & Lefever Insurance Agency d/b/a Star Insurance Agency and Arlington/Roe & Co., Inc. TERMINATED from the case.

SO ORDERED.

Entered this 12th day of October, 2011.

¹Because the Court is dismissing this case for lack of jurisdiction and without prejudice, the Motion to Dismiss filed by Goshen Air Center (Docket # 47) is DENIED as MOOT. Accordingly, since the case has not been voluntarily dismissed, Indiana’s Journey’s Account Statute, Ind. Code § 34-11-8-1, remains potentially applicable if the case is re-filed in state court. *Blinn v. Law Firm of Johnson, Beaman, Bratch, Beal, & White, LLP*, 948 N.E.2d 814 (noting that voluntary dismissal of an earlier claim can preclude invocation of the Journey’s Account Statute).

/s/ Roger B. Cosby
Roger B. Cosby
United States Magistrate Judge