

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AMERICAN FAMILY MUTUAL)	
INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	1:10-cv-571-TWP-WGH
)	
COLIN M. BETTS, JILL BETTS and USAA,)	
)	
Defendants.)	

ORDER DENYING MOTION TO DISMISS

This matter is before the Court on the Motion for Dismissal filed by Defendant Colin M. Betts (“Mr. Betts”) on August 18, 2010. (Docket No. 20). Plaintiff’s Response to Defendant Colin Betts’ Motion for Dismissal was filed on September 8, 2010. (Docket No. 24). No reply brief has been filed.

The Court, being duly advised, now **DENIES** the Motion for Dismissal under Rule 12.

This motion to dismiss under Rule 12 raises the issue of whether this Court has jurisdiction over Mr. Betts. In paragraph 1 of his Motion for Dismissal, Mr. Betts advises the Court that he maintained his residency in the State of Tennessee, but “at all relevant times” he maintained a “conditional residence” in Indiana. Further, the Court’s docket reflects that service was made on Mr. Betts by serving a Summons and Complaint upon him at the Granger, Indiana, address (Docket No. 11) and by mailing a copy to him and

leaving a copy at a Muncie, Indiana, address. Mr. Betts does not deny that he was served with the Summons and Complaint in this case.

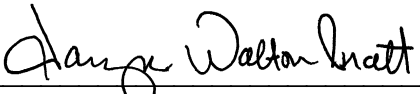
Federal Rule of Civil Procedure 4(e) provides that federal court will have personal jurisdiction over a defendant if service is effectuated pursuant to the law of the state where the district court is located and a summons is delivered to the defendant personally or left at his usual place of abode with a person of suitable age and discretion. Because Mr. Betts does not dispute that he actually received the Summons and Complaint, and he admits that at all relevant times he had at least a “conditional residence” in Indiana, the Court concludes that due process is not offended by requiring Mr. Betts to defend the claim in this case. Therefore, the Motion for Dismissal is **DENIED**.

The Court has reviewed the Motion for Dismissal and concludes that in addition to seeking to dismiss this case for lack of jurisdiction, Mr. Betts raises other issues that would constitute an answer on his behalf. Therefore, the Court concludes that Defendant Colin M. Betts’ Motion for Dismissal should be considered an Answer that has been filed.

Magistrate Judge Hussmann has set a schedule in this matter (Docket No. 29), and the parties are directed to comply with that scheduling order.

SO ORDERED.

Dated: 12/14/2010



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Copies to:

Robert Scott O'Dell
O'DELL & ASSOCIATES PC
rodell@odell-lawfirm.com

COLIN M. BETTS
52490 Avanelle Street
Granger, IN 46530

JILL BETTS
2417 West Bethel Ave.
Muncie, IN 47304