

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANAALVIN JOINER AND
BARBARA JOINER

CIVIL ACTION

VERSUS

NO. 17-213-BAJ-EWD

BRYAN LEE LOUTZENHISER,
LL TRANS, INC., AND
UNITED CASUALTY COMPANY**NOTICE AND ORDER DENYING MOTION TO SUBSTITUTE PLEADING**

Before the court is a third Motion to Substitute Pleading¹ (the “Motion to Substitute”) filed by BITCO General Insurance Company (“BITCO”).

On July 20, 2017, BITCO filed an Unopposed Motion for Leave to File Amended Complaint of Intervention (the “Motion for Leave”).² Per its Motion for Leave, BITCO asserted that its amended Complaint of Intervention would “not destroy subject matter jurisdiction since the party being named is also diverse to the plaintiffs and the intervenor.”³ However, BITCO did not adequately alleged its own citizenship. Accordingly, on July 21, 2017, BITCO was ordered to file a Motion to Substitute the proposed Amended Complaint of Intervention (R. Doc. 26, pp. 4-6) with a proposed pleading setting forth BITCO’s corporate (or otherwise) status and its citizenship.⁴

On July 27, 2017, BITCO filed its first Motion to Substitute.⁵ The proposed Complaint of Intervention included in the Motion to Substitute was an exact copy of the previously proposed

¹ R. Doc. 33.

² R. Doc. 26. BITCO asserts that prior to filing its Motion for Leave, it “obtained consent for the filing and granting of the motion from all parties having an interest to oppose.” R. Doc. 26, ¶ 8.

³ R. Doc. 26, ¶ 6.

⁴ R. Doc. 28.

⁵ R. Doc. 29.

pleading included in the Motion for Leave. As before, BITCO's only allegation with regard to its citizenship was that it is "a company authorized to do and doing business in the State of Louisiana."⁶ Because this is an insufficient allegation of BITCO's citizenship, BITCO's first Motion to Substitute was denied.⁷ On August 1, 2017, BITCO filed its second Motion to Substitute Pleading.⁸ Per the proposed Complaint of Intervention, BITCO asserted that it is "a company authorized to do business in the State of Louisiana and who also has its domicile or citizenship in the State of Illinois."⁹ Despite this court's previous order requiring BITCO to state: (1) the type of entity it is (i.e., a corporation or an unincorporated association); and (2) its citizenship based on the particular rules for that type of entity,¹⁰ BITCO failed to allege whether it is a corporation or, alternatively, an unincorporated association (such as an LLC). Further, BITCO failed to adequately allege its citizenship. As set forth in previous orders, if BITCO is a corporation, it must allege: (1) its state of incorporation; and (2) its principal place of business. If BITCO is an unincorporated association, it must allege the citizenship of each of its member(s). Accordingly, BITCO's second Motion to Substitute Pleading was denied on August 3, 2017, and BITCO was ordered to file a Motion to Substitute the proposed Amended Complaint of Intervention (R. Doc. 26, pp. 4-6) with a proposed pleading that set forth BITCO's corporate (or otherwise) status and its citizenship. If BITCO is a corporation, BITCO was ordered to set forth its state of incorporation and principal place of business.¹¹

⁶ R. Doc. 29.

⁷ R. Doc. 30.

⁸ R. Doc. 31.

⁹ R. Doc. 31, p. 2.

¹⁰ See, R. Docs. 28 & 30.

¹¹ R. Doc. 32.

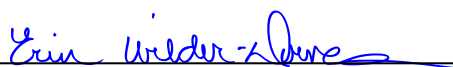
On August 7, 2017, BITCO filed the instant Motion to Substitute Pleading.¹² Per its proposed substitute pleading, BITCO alleges that it is “a corporation of the State of Iowa...”¹³ While such allegation fulfills the first requirement of this court’s previous orders, and indicates that BITCO is a corporation, the proposed substitute pleading **still does not adequately allege BITCO’s citizenship**. In diversity cases involving corporations, “allegations of citizenship must set forth the state of incorporation as well as the principal place of business of each corporation.” *Getty Oil, Div. of Texaco v. Ins. Co. of North America*, 841 F.2d 1254, 1259 (5th Cir. 1988).

IT IS HEREBY ORDERED that the Motion to Substitute Pleading¹⁴ filed by BITCO General Insurance Company (“BITCO”) is **DENIED**.

IT IS FURTHER ORDERED that BITCO shall file a Motion to Substitute the proposed Amended Complaint of Intervention (R. Doc. 26, pp. 4-6) with a proposed pleading that **explicitly alleges BITCO’s: (1) state of incorporation; and (2) principal place of business**. BITCO shall have three (3) days from this Notice and Order to file the Motion to Substitute. No leave of court is necessary to file the Motion to Substitute.

BITCO is **HEREBY NOTIFIED** that failure to comply with this Notice and Order may result in denial of the pending Unopposed Motion for Leave to File Amended Complaint of Intervention.¹⁵

Signed in Baton Rouge, Louisiana, on August 8, 2017.



ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

¹² R. Doc. 33.

¹³ R. Doc. 33, p. 2.

¹⁴ R. Doc. 33.

¹⁵ R. Doc. 26.