

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RICKY MYERS, ET AL

CIVIL ACTION NO. 17-cv-0663

VERSUS

JUDGE FOOTE

PROGRESSIVE COUNTY MUTUAL
INSURANCE CO., ET AL

MAGISTRATE JUDGE HORNSBY

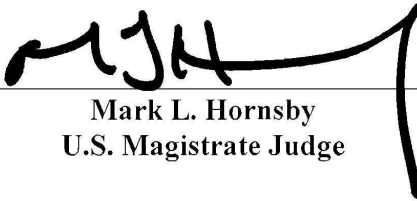
MEMORANDUM ORDER

Ricky Myers filed suit in state court and alleged that tow truck operator Tommy Jones negligently allowed a car to roll onto Myers and injure him. Myers and his wife filed suit against Jones and his employer, Recovery, Inc., and insurer Progressive County Mutual Insurance Company.

Defendants removed the case based on an assertion of diversity jurisdiction. The notice of removal alleges that Ricky and Amber Myers are “residents” of Louisiana and that Tommy Jones is a “resident” of Texas. It is domicile rather than mere residency that controls for purposes of determining citizenship in a diversity case. “It is well established that an allegation of residency does not satisfy the requirement of an allegation of citizenship.” Great Plains Trust Co. v. Morgan Stanley, 313 F.3d 305, 310 n. 2 (5th Cir. 2002) The court notes that the state court petition describes Ricky and Amber Myers as being domiciled in Louisiana, but the petition states that the plaintiffs are not sure of the domicile of Jones. The court will treat the notice of removal as alleging that Tommy Jones is domiciled in Texas unless an amended notice of removal is filed within 14 days and states to the contrary.

Recovery and Progressive County have filed an answer, but Tommy Jones has not. The notice of removal represents that long-arm service was attempted on Jones on April 22, 2017, but an affidavit of service has not yet been filed in the record. Plaintiffs are directed to promptly complete service on Mr. Jones and file evidence of the same. The court will set a scheduling conference once this final defendant has filed an answer.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 25th day of May, 2017.



Mark L. Hornsby
U.S. Magistrate Judge