

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

RICHARD ST. PE COMPANY, INC.

CIVIL ACTION 10-1466

VERSUS

JUDGE DOHERTY

AT&T LD, ET AL

MAGISTRATE JUDGE HANNA

***ORDER GRANTING MOTION TO COMPEL
AND REQUIRING BRIEFING ON JURISDICTIONAL
AMOUNT IN CONTROVERSY***

Defendants filed a Motion to Compel (Rec. Doc. 5) on October 19, 2010, asking the court to compel plaintiff to answer Requests for Admission and Interrogatories propounded in state court on January 21, 2010, and BellSouth's Interrogatories and Requests for Production of Documents dated April 7, 2010. These sets of discovery were propounded while the action was pending in Louisiana state court, prior to removal to federal court on September 22, 2010. Defendants argue that despite multiple requests and demands, plaintiff has not responded at all to any of the propounded discovery.

Opposition to the motion to compel was due by November 9, 2010. However, to date no opposition has been received.

One request for admission asks plaintiff to admit his damages are less than the necessary amount in controversy for federal court jurisdiction and an interrogatory also requests clarification of plaintiff's damages. After a review of the pleadings, the undersigned has serious concerns regarding the amount in controversy and whether this

court has subject matter jurisdiction under 28 U.S.C. § 1332.

A removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000 by either (1) demonstrating that it is facially apparent that the claims are likely above \$75,000 or (2) setting forth the specific facts in controversy that support a finding of the jurisdictional amount. Simon v. WalMart Stores, 193 F.3d 848 (5th Cir. 1999); Luckett v. Delta Airlines, Inc., 171 F.3d 295 (5th Cir. 1999). The jurisdictional amount is not "facially apparent" from the complaint and removing defendants have failed to set forth sufficient specific facts to establish jurisdiction.

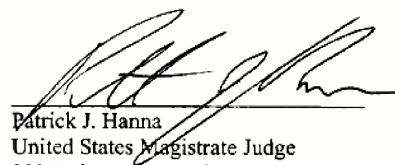
IT IS THEREFORE ORDERED that defendants' Motion to Compel (Rec. Doc. 5) is **GRANTED IN PART AND DENIED IN PART** as follows:

- 1) Plaintiff shall respond to defendants' propounded discovery no later than Friday, **November 26, 2010**;
- 2) Oral argument set for November 24, 2010, is **CANCELED**;
- 3) All other requested relief is **DENIED**.

IT IS FURTHER ORDERED that or on before **December 10, 2010**, defendants shall file a memorandum setting forth specific facts in controversy which support a finding that the jurisdictional amount exists and citing applicable case law involving similar facts and which reflect verdicts in an amount of \$75,000.00 or more. Supporting documentation, such as the value of the claim at issue, and an affidavit from defense

counsel setting forth the value, and the underlying facts, are advisable. Simon and Luckett, supra, establish that a showing of jurisdictional amount is properly made by affidavit.

Lafayette, Louisiana, this 16th day of November, 2010.



Patrick J. Hanna
United States Magistrate Judge
800 Lafayette St., Suite 3500
Lafayette, Louisiana 70501
(337) 593-5140 (phone) 593-5155 (fax)