

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL CASE NO. 1:09cv189

SILVER-LINE PLASTICS CORPORATION,)
a North Carolina Corporation,)
)
Plaintiff,)
)
vs.)
)
RHEOGISTICS, LLC, a Mississippi)
Limited Liability Company,)
)
Defendant.)
_____)

ORDER

THIS MATTER is before the Court *sua sponte* to ascertain subject matter jurisdiction.

The Defendant removed this action from state court based on diversity jurisdiction. [Doc. 1, at 1]. In the complaint, the Plaintiff alleges that the Defendant is a limited liability company organized and existing under the law of Mississippi. [Doc. 1-1, at 4]. In the notice of removal, the Defendant alleges that it is a Delaware limited liability corporation with its principal place of business in Mississippi. [Doc. 1, at 1]. It thus claims that it is a resident of both Delaware and Mississippi for purposes of jurisdiction.

[Id.].

Courts have an affirmative duty to question subject matter jurisdiction even when the parties have not done so. Interstate Petroleum Corp. v. Morgan, 249 F.3d 215 (4th Cir. 2001); Plyer v. Moore, 129 F.3d 728, 732 n.6 (4th Cir. 1997), *certiorari denied* 524 U.S. 945, 118 S.Ct. 2359, 141 L.Ed.2d 727 (1998); 28 U.S.C. §1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). A limited liability company is a citizen of all states in which its constituent members are citizens. Carden v. Arkoma Associates, 494 U.S. 185, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990). The Defendant has not disclosed in the notice of removal whether it has constituent members or partners and therefore will be required to do so.

IT IS, THEREFORE, ORDERED that on or before ten business days from entry of this Order, the Defendant shall file response disclosing the names and citizenship, if any, of all its constituent members or partners, and, for any such constituent members or partners that are limited liability companies or partnerships, to identify the citizenship of the respective constituent members or partners until all such constituents are fully identified.

Signed: July 19, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

