

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Fr. Antana V. Bitinas,	:	
Carol Brundage	:	
	:	
v.	:	
	:	No. 3:04cv576 (JBA)
Annette M. Roback,	:	
Raymond P. Roback,	:	
United Service Automobile	:	
Association,	:	
Toi E. Jefferson	:	

Rulings on Motion to Dismiss Pursuant to Rules 12(n)(1), 12(b)(2) and 12(b)(6) [Doc. # 10]; Motion to Amend Complaint [Doc. # 15], Motion for Amendment to Complaint [Doc. # 17]

Plaintiffs commenced this action on April 7, 2004, claiming that they were injured in a car accident as a result of defendant Annette M. Roback's negligence. The car driven by Annette Roback was owned by defendant Raymond P. Roback and insured by defendant United Service Automobile Association ("USAA"). Defendant Toi E. Jefferson is the USAA Casualty Adjuster for the Northeast Region and was in charge of settlement negotiations. Defendants have moved to dismiss plaintiffs' complaint for lack of subject matter jurisdiction, lack of personal jurisdiction over defendant Jefferson, and for failure to state a claim.

Because plaintiffs' complaint sounds only in negligence, to establish subject matter jurisdiction they must

demonstrate that diversity of citizenship is complete between the parties. Here, the inclusion of defendant USAA makes such diversity impossible. Defendant USAA is not a corporation, but a "reciprocal interinsurance exchange organized under the laws of the State of Texas that is an unincorporated association. . . ." Affidavit of Robert L. Hoagland, June 18, 2004 [Doc. # 11, Ex. A] at ¶ 4. As the Second Circuit explained in Baer v. United Services Automobile Association, 503 F.2d 393 (2d Cir. 1974):

For the purpose of determining whether diversity jurisdiction exists, unincorporated associations have long been considered to be citizens of each and every state in which the association has members. Thus, if the unincorporated association party to a lawsuit has any member whose state citizenship coincides with the state citizenship of any of the opposing parties in the lawsuit, a federal district court has no diversity jurisdiction.

Id. at 395.

USAA has submitted an affidavit affirming that it has "members or subscribers in all fifty (50) of the United States of America," including in the State of Connecticut, where plaintiffs reside. See Affidavit of Robert Hoagland [Doc. # 11, Ex. A] at ¶¶ 5-6. The inclusion of USAA as a defendant in this suit therefore defeats diversity jurisdiction, and the complaint must be dismissed. Plaintiffs' two motions to amend their complaint do not seek

to remove USAA as a defendant.¹ Accordingly, defendants' motion to dismiss [Doc. # 10] is GRANTED, and plaintiffs' motions to amend [Docs ## 15, 17] are DENIED as moot. The Clerk is directed to close this case.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 10th day of February, 2005.

¹Defendants gave notice of their intention to move to dismiss for lack of diversity jurisdiction at the June 4, 2004 pre-filing conference.