

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DENNIS EARL BARNES,

Petitioner,

ORDER

03-C-703-C

v.

WILLIAM J. BLACK and METROPOLITAN  
LIFE PROPERTY & CASUALTY INSURANCE,

Respondents.  
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In an order dated February 3, 2004, I screened petitioner's complaint pursuant to the in forma pauperis statute, 28 U.S.C. § 1915. I denied petitioner leave to proceed on his equal protection claim because he failed to identify how he was treated differently from otherwise similarly situated individuals and did not say that he had suffered any injury as a result of his alleged different treatment, but I stayed a decision on his state law claim that respondent William Black had negligently collided into the passenger side of a vehicle in which petitioner was a passenger, causing petitioner physical injuries. Alvarado v. Sersch, 2003 WI 55 ¶ 13-14, 262 Wis.2d 74, 662 N.W.2d 350 (laying out applicable standards

governing liability in standard negligence actions). Also, I stayed a decision of plaintiff's claim that respondent Metropolitan Life Property and Casualty Insurance is acting in bad faith in refusing to pay for some of petitioner's medical bill. (Under Wisconsin state law, there is a cause of action in tort when an insurer refuses in bad faith to pay a claim for which coverage is not fairly debatable. Anderson v. Continental Ins. Co., 85 Wis. 2d 675, 685-86, 271 N.W.2d 368, 374 (1978)).

I indicated that petitioner would be allowed to proceed on his tort claims against respondents Black and Metropolitan so long as he amended his complaint to allege diverse citizenship. Amendment was necessary because there is no federal jurisdiction over state law claims unless the diversity jurisdiction requirements of 28 U.S.C. § 1332 are met, one of which is that all plaintiffs and all defendants must be citizens of different states. Although petitioner had provided mailing addresses for himself and respondents, indicating that he and the respondents receive mail in different states, he had not alleged diverse *citizenship*.

Now petitioner has amended his complaint to make it clear that he plans to reside in his home state of Wisconsin upon his release from the Sauk County jail, where he currently resides as a pretrial detainee. He alleges also that respondent Black is a citizen of Illinois. Petitioner provides an out of state mailing address for respondent Metropolitan, but the citizenship of a corporation is determined by its place of incorporation and principal place of business. A cursory review of the public records suggests that respondent Metropolitan

is incorporated in New York and has its principal place of business there. Hoover's Co. Capsules, 2004 WL 55018888 (Mar. 9, 2004) (headquarters in New York, NY); New York Department of State, Division of Corporations, Entity Information at [http://www.appsext4.dos.state.ny.us/corp\\_public](http://www.appsext4.dos.state.ny.us/corp_public) (March 9, 2004). See also Belleville Catering Co. v. Champaign Market Place, L.L.C., 350 F.3d 691, 693 (7th Cir. 2003) (using state internet databases of incorporation to determine corporate citizenship for diversity purposes); Metropolitan Life Ins. Co. v. Estate of Cammon, 929 F.2d 1220, 1223 (7th Cir. 1991) (applying nerve center test to determine corporate citizenship and finding Metropolitan Life Insurance Company to be corporate citizen of New York). As noted in the February 3 order, petitioner alleges damages in excess of \$75,000. Therefore, it appears on the face of the complaint that this court has diversity jurisdiction over plaintiff's state law claims. However, if it is the case that respondents are not diverse in fact, they are free to move the court to dismiss the case for lack of jurisdiction, Fed. R. Civ. P. 12(b)(1), at which point petitioner will have to adduce admissible evidence showing the citizenship of each party.

Because petitioner's amended complaint invokes diversity jurisdiction pursuant to 28 U.S.C. § 1332, petitioner will be granted leave to proceed on his negligence claim against respondents Black and Metropolitan.

## ORDER

IT IS ORDERED that petitioner Dennis E. Barnes is granted leave to proceed on his state law claims against respondents William Black and Metropolitan Life Property & Casualty Insurance.

- For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.
- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- The unpaid balance of petitioner's filing fee is \$135.42; petitioner is obligated to pay

this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 10th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge