

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

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MICHAEL W. JELINSKI, individually  
and as Special Administrator of the  
Estate of Donna M. Yanda,

Plaintiff,

v.

OLD REPUBLIC INSURANCE COMPANY,  
LAND O'LAKES, INC. and LARRY L.  
KLINDWORTH,

Defendants and  
Third-Party plaintiffs,

v.

B.R. AMON & SONS, INC. and TRANSCONTINENTAL  
INSURANCE COMPANY,

Third-Party defendants.

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Defendants and third-party plaintiffs, Old Republic Insurance Company, Land O'Lakes, Inc. and Larry L. Klindworth have moved to dismiss this case for lack of subject matter jurisdiction. Third-party defendants B.R. Amon & Sons, Inc. and Transcontinental Insurance Company have joined in the motion. The moving parties contend that diversity

jurisdiction is lacking and no issues of federal law exist. Plaintiff has not opposed the motion, although it was aware under the terms of the preliminary pretrial order that it had twenty-one days in which to file a responsive brief.

The record discloses that plaintiff Michael W. Jelinski began this suit in federal court against defendants Old Republic Insurance Company, Land O'Lakes, Inc. and Larry L. Klindworth on April 21, 2004, asserting jurisdiction under 28 U.S.C. § 1332. On July 26, 2004, defendants filed a third-party complaint against B.R. Amon & Sons, Inc. and Transcontinental Insurance Company. In September, plaintiff filed an amended complaint, asserting claims against B.R. Amon & Sons and Transcontinental. On December 9, 2004, the defendants filed the motion to dismiss that is before the court.

Because plaintiff has not opposed the motion, it will be granted. It would be granted in any event under the authority of Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978), in which the Court held that a plaintiff may not defeat the statutory requirement of complete diversity by suing only those defendants of diverse citizenship and then suing nondiverse defendants after they had been impleaded by the defendants. The Supreme Court considered the federal courts' ancillary jurisdiction and held that it did not extend to plaintiff's claims against the impleaded third-party defendants because plaintiff's claims against those defendants are independent of any claim against the original defendants and are asserted by the plaintiff, who made the choice to bring the suit in federal court. Id.

at 376. Although the concept of ancillary jurisdiction has been superseded by that of supplemental jurisdiction and codified in 28 U.S.C. § 1367, the change does not help plaintiff. Subsection (b) of § 1367 provides explicitly that in diversity cases, district courts do not have supplemental jurisdiction over claims by plaintiffs against persons made parties under certain provisions of the Federal Rules of Civil Procedure, such as Fed. R. Civ. P. 14, which governs interpleader, “when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.”

ORDER

IT IS ORDERED that the motion of the defendants and third-party plaintiffs and the third-party defendants to dismiss this case for lack of jurisdiction is GRANTED.

Entered this 3<sup>rd</sup> day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge