

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**WACHOVIA BANK, N.A.**

**PLAINTIFF**

**VS.**

**NO. 1:09cv222-HSO-JMR**

**STEPHEN R. COLSON, et al.**

**DEFENDANTS**

**RESPONSE BY LAWYERS TITLE INSURANCE CORPORATION  
TO COURT'S SHOW CAUSE ORDER**

COMES NOW LAWYERS TITLE INSURANCE CORPORATION (Lawyers Title) and responds to the Court's May 19, 2009 Show Cause Order [Doc. 69]. As grounds for this Response, Lawyers Title says:

On February 13, 2009, Wachovia Bank, N.A. filed the present interpleader action pursuant to Mississippi state law in the Chancery Court of Harrison County, Mississippi. Wachovia's Complaint sought, among other things, to deposit into the chancery court's registry the monies of certain Defendants held in Wachovia Bank accounts. Subsequently, Wachovia Bank deposited all of the identified funds into the chancery court registry by order of the chancery court. *See* Attachment 2 to Docket Entry 1, pp. 24-25.

On March 20, 2009, Prestige Title removed the action to this Court by invoking diversity of citizenship jurisdiction under 28 U.S.C. §1441. After the removal, a number of additional claimants filed motions to intervene seeking to join this action. Among those claimants is Sandion d/b/a Coldwell Banker United, Realtors ("Sandion") which filed its Motion to Intervene on April 8, 2009. On May 19, 2009, the Court granted Sandion's Motion to Intervene. *See* Docket Entry No. 69. In that order, the Court questions its subject matter jurisdiction since both Wachovia Bank and Sandion are North Carolina citizens. Because Sandion is considered a necessary and indispensable party, the Court opined that the lack of diversity between Wachovia Bank and Sandion undermines the Court's

jurisdiction. *Id.*, pp. 4-5. Thus, the Court requested responses from the parties as to why this case should not be remanded to state court. *Id.*, p. 7.

In its May 19, 2009 Memorandum Opinion and Order, the Court states that “this case does not involve statutory interpleader, but instead Rule 22, or equitable, interpleader.” *Id.*, p. 4. With all due respect to the Court, this action meets all of the requirements of a statutory interpleader action.

28 U.S.C. §1335 grants original jurisdiction to the district courts over interpleader actions when the plaintiff (stakeholder) has “in his custody ... money or property of the value of \$500 or more....” To establish jurisdiction, there must be two or more claimants of diverse citizenship and the stakeholder must deposit the money or property in dispute into the court’s registry. *See* 28 U.S.C. §1335(a)(1). The jurisdictional requirements under §1335 are less stringent than under F.R.C.P. 22. Under §1335, there is no requirement that there be complete diversity between the plaintiff and all of the claimants. The statute only requires diversity of citizenship between at least two claimants. As the United States Supreme Court has noted,

[t]he interpleader statute, 28 U.S.C. § 1335, applies where there are ‘Two or more adverse claimants, of diverse citizenship.’ This provision has been uniformly construed to require only ‘minimal diversity,’ that is, diversity of citizenship between two or more claimants, without regard to the circumstance that other rival claimants may be co-citizens.

*State Farm Fire & Cas. v. Tashire*, 386 U.S. 523, 530 (1967).

As explained by the Fifth Circuit, the jurisdictional requirements are met when there are at least two diverse claimants. The fact that some claimants are from the same state does not matter. *See Haynes v. Felder*, 239 F.2d 868, 874-75 (5th Cir. 1957) (finding 28 U.S.C. §1335 jurisdictional requirements were met where there were three claimants from Texas and one claimant from Tennessee).

This interpleader action meets all of the §1335 requirements. There is diversity of citizenship between at least two claimants named in this action as Prestige Title, Inc. is a Mississippi corporation and Lawyers Title is a Nebraska corporation. *See* Complaint for Interpleader, Declaratory Judgment

and Other Related Relief, pp. 2 and 4. Furthermore, on February 13, 2009, Wachovia Bank, as an innocent stakeholder, deposited \$1,534,563.56 into the registry of the Harrison County Chancery Court. As such, all of the jurisdictional requirements of §1335 are met in this action. Thus, the facts of this case support the Court's original jurisdiction over this case.

Additionally, Wachovia Bank no longer has any stated interest in this action. In response to the Court's Show Cause Order, Wachovia Bank avers that it "is an innocent stakeholder ... [and] desires only a jurisdictionally sufficient order of discharge once all parties are present." *See* Docket Entry No. 70. Clearly, Wachovia Bank is a disinterested stakeholder as it has no interest in the funds deposited into the Court's registry. The Court may dismiss Wachovia Bank's additional claims for declaratory judgment and for an accounting since its response to the Court's Show Cause Order is tantamount to a motion to be discharged. A dismissal of those claims would ensure the Court's jurisdiction under §1335.

For these reasons, the Court should not remand this action to the Harrison County Chancery Court since the facts support this Court's jurisdiction under 28 U.S.C. §1335.

This 3rd day of June, 2009.

Respectfully submitted,

s/Brad C. Moody  
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OF COUNSEL FOR LAWYERS TITLE

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**CERTIFICATE OF SERVICE**

I, Brad C. Moody, one of the attorneys for Lawyers Title Corp., hereby certify that I have this day electronically filed the above and foregoing *Response of Lawyers Title Insurance Corporation to Court's Show Cause Order* by Court Order via the Court's ECF system which sent notification of such filing to all counsel of record.

SO CERTIFIED, this 3rd day of June, 2009.

/s/Brad C. Moody  
BRAD C. MOODY