

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-11733-AA

SERENDIPITY AT SEA, LLC,

Plaintiff-Appellant,

versus

UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NUMBER
187581,

Defendant-Appellee,

USI INSURANCE SERVICES, LLC,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

The issues raised by the jurisdictional question (“JQ”) with respect to the dismissal of USI Insurance Services, LLC (“USI”) are CARRIED WITH THE CASE. A final determination regarding any jurisdictional issues will be made by the panel to whom this case is submitted after briefing on the merits. The parties may further address any jurisdictional issues in their briefs as they deem necessary or appropriate. However, first, we *sua sponte* REMAND this case to the district court for the limited purpose of making a factual determination as to whether diversity

jurisdiction exists. *See Fitzgerald v. Seaboard Sys. R.R., Inc.*, 760 F.2d 1249, 1251 (11th Cir. 1985); *Am. Motorists Ins. Co. v. Am. Emp'rs. Ins. Co.*, 600 F.2d 15, 16 (5th Cir. 1979).

In 2020, Underwriters at Lloyd's of London Subscribing to Policy Number 187581 ("Underwriters") removed Serendipity at Sea, LLC's ("Serendipity") state court case to federal court. Underwriters invoked the district court's diversity jurisdiction and asserted that the amount in controversy exceeded \$75,000 based on the amount sought in the complaint. Underwriters asserted that Serendipity was a Florida limited liability company with its principal address in Florida. Underwriters also alleged that there were three subscribers to the policy: Travelers Syndicate Management Limited; MS Amlin Corporate Member, Ltd.; and Munich Re Syndicate 457 at Lloyd's. The first two, it alleged, were United Kingdom private limited companies with principal addresses and nerve centers in London. The latter, it alleged, had a sole corporate member, which was, in turn, a United Kingdom private limited company with a principal address and nerve center in London. Underwriters additionally asserted that the district court had admiralty and maritime jurisdiction because Serendipity had alleged a breach of a maritime contract.

At a hearing on Underwriters' motion to dismiss one of Serendipity's claims as premature, the district court noted that it saw "no issues on diversity jurisdiction given the amount in controversy and the citizenship of the parties." Serendipity filed four amended complaints, noting that the district court had diversity jurisdiction. Serendipity also sought to add another defendant, USI, which was later dismissed.

A JQ was issued asking whether there is a final and appealable order in light of the voluntary dismissal of USI not being signed by Underwriters. The JQ also asked whether the district court was proceeding under admiralty or diversity jurisdiction and, if the latter, whether

the relevant pleadings sufficiently alleged the parties' citizenship or whether the allegations should be amended.

While both parties agree that diversity exists, neither party alleged the citizenship of each member of Serendipity and USI. Serendipity states that it is incorporated in Florida and that its two officers and managers are residents of Florida. It also asserts that, on information and belief, USI is a Delaware corporation with its principal place of business in New York. Underwriters also argues that the contract at issue is a maritime insurance policy that falls within the district court's admiralty jurisdiction, but Serendipity argues that the district court was proceeding based on diversity jurisdiction.

We are obligated to raise concerns about our jurisdiction and the district court's subject matter jurisdiction *sua sponte*. See *Sabal Trail Transmission, LLC v. 3,921 Acres of Land*, 947 F.3d 1362, 1370 (11th Cir. 2020); *Mallory & Evans Contractors & Eng'rs, LLC v. Tuskegee Univ.*, 663 F.3d 1304, 1304 (11th Cir. 2011).

While we carry with the case the issues related to the precise nature of the stipulated dismissal, we think it sufficiently likely that there was a final order that we will address the district court's subject matter jurisdiction now. See *King v. Cessna Aircraft Co.*, 505 F.3d 1160, 1165 (11th Cir. 2007) (explaining that we cannot address defects in the district court's jurisdiction unless there is appellate jurisdiction). In light of Serendipity's and Underwriters' agreement in their JQ responses that diversity jurisdiction exists, we will proceed on this election. If that turns out not to be the case, we will address other potential bases for subject matter jurisdiction as necessary.

A civil action brought in state court of which a federal district court has original jurisdiction may be removed by the defendant to the district court. 28 U.S.C. § 1441(a). District courts have subject matter jurisdiction over civil actions where the amount in controversy exceeds \$75,000

and the action is between a citizen of a state and a citizen of a foreign state or citizens of different states and in which citizens of a foreign state are additional parties. 28 U.S.C. § 1332(a)(2)-(3). Diversity jurisdiction requires complete diversity between all plaintiffs and all defendants. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). “It is a standard rule that federal courts do not have diversity jurisdiction over cases where there are foreign entities on both sides of the action, without the presence of citizens of a state on both sides.” *Iraola & Cia, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 860 (11th Cir. 2000). Diversity jurisdiction is determined at the time of removal. *Thermoset Corp. v. Bldg. Materials Corp. of Am.*, 849 F.3d 1313, 1317 (11th Cir. 2017); *see also Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1243 & n.2 (11th Cir. 2007).

“[T]he party invoking the court’s jurisdiction bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction.” *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002). Allegations of diversity jurisdiction can be in the notice of removal or complaint. *See Lincoln Prop. Co.*, 546 U.S. at 85; *see also, e.g., Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1020-22 (11th Cir. 2004) (looking to a notice of removal for diversity allegations).

Where the pleadings’ allegations of citizenship and jurisdiction are insufficient, we may allow admissions that are supported by record evidence to cure the jurisdictional pleading deficiencies. *See Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1342-43 & n.12 (11th Cir. 2011); *Travaglio v. Am. Express Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013). However, to cure a pleading deficiency, self-serving arguments and unsworn statements in briefs are insufficient to establish a party’s citizenship. *Travaglio*, 735 F.3d at 1269-70. If we cannot determine whether the parties are in fact diverse, we should remand the case to the district court to determine if there is jurisdiction. *See Am. Motorists Ins. Co.*, 600 F.2d at 16.

With respect to Underwriters, we have held that “syndicates of Lloyd’s underwriters must plead the citizenship of each of their members.” *Underwriters at Lloyd’s, London v. Osting-Schwinn*, 613 F.3d 1079, 1083 (11th Cir. 2010). In doing so, we implicitly treated a United Kingdom private limited company as a foreign corporation for purposes of diversity allegations. *See id.* at 1084, 1092; *see also JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 90 (2002) (concluding that Traffic Stream (BVI) Infrastructure Ltd., which the Supreme Court described as “a corporation organized under the laws of the British Virgin Islands (BVI), an Overseas Territory of the United Kingdom,” was a citizen of the United Kingdom); *cf.* Companies Act, 2006, c 46, §§ 1(1)(a), 3-4, 7(1)(b), 15(1) (providing for a certificate of incorporation for private limited companies). A corporation of a foreign country is, for purposes of jurisdiction in the courts of the United States, a citizen or subject of such country and a citizen of the state or country in which it has its principal place of business. 28 U.S.C. § 1332(c)(1). “[T]he phrase ‘principal place of business’ refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (noting that some lower federal courts have referred to that place as the corporation’s “nerve center”). Here, each of Underwriters’ subscribers was alleged in the notice of removal to be a United Kingdom private limited company—or a syndicate with a sole private limited company subscriber—with their nerve centers in London. Therefore, Underwriters is a citizen of the United Kingdom.

However, the citizenship allegations for Serendipity and USI are insufficient. They are both limited liability companies, and “[t]o sufficiently allege the citizenships of these unincorporated business entities, a party must list the citizenships of all the members of the limited liability company.” *Mallory*, 663 F.3d at 1305. With respect to Serendipity, it is not clear whether

the two officers and managers that Serendipity described in its JQ response are members and, if so, whether they are Serendipity's only members. Moreover, to establish diversity jurisdiction with respect to a natural person, the pleadings must allege the person's citizenship, which is equivalent to domicile, and an allegation of residence is insufficient. *See Travaglio*, 735 F.3d at 1269. Likewise, the pleadings have failed to list all of USI's members and stating the laws under which it was created and its principal place of business is insufficient. *Mallory*, 663 F.3d at 1305.

Because we cannot determine whether the parties are in fact diverse, we *sua sponte* REMAND the proceedings to the district court for the limited purpose of determining the citizenships of Serendipity and USI. *See Am. Motorists Ins. Co.*, 600 F.2d at 16. We do not foreclose the district court from considering any motions, supplemental evidence, or other matters that it deems necessary or appropriate to address the issue of jurisdiction. Upon making its factual determination, the district court shall return the record, as supplemented, to this Court for further proceedings.