

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JEROME DAVIS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 06-128 KAJ  
 )  
 UNION PACIFIC RAILROAD )  
 COMPANY, )  
 )  
 Defendant. )

**MEMORANDUM ORDER**

This is a purported class action alleging personal injuries from lead poisoning in the soil of Nebraska. (Docket Item ["D.I."] 2.) The plaintiff, Jerome Davis, is incarcerated in Lincoln, Nebraska. His hometown is Omaha, Nebraska, where he alleges that he still has a residence. (*Id.*) The defendant, Union Pacific Railroad Company, is a Delaware corporation with its principal place of business in Omaha, Nebraska. (D.I. 29, Ex. A.) Presently before me is the defendant's motion to dismiss for lack of subject matter jurisdiction. (D.I. 28; the "Motion".) The plaintiff has previously asserted much the same type of claim against the defendant in a state court action in Nebraska, which was dismissed. (*See id.* at Ex. C.) Because the only asserted basis for jurisdiction is diversity of citizenship, pursuant to 28 U.S.C. § 1332 (see D.I. 2; D.I. 34), and because the parties here are not of diverse citizenship, this action too must be dismissed.

Not surprisingly, section 1332 of title 28 requires that, for original jurisdiction to be invoked in a federal court on the basis of diversity of citizenship, the parties must actually be "citizens of different States ... ." 28 U.S.C. § 1332(a)(1). Subsection (c)(1)

of that section further instructs that, with a limited exception not applicable here, “a corporation shall be deemed to be a citizen of any State by which it has been incorporated *and* of the State where it has its principal place of business ... .” (Emphasis added.) It is undisputed that the defendant has its principal place of business in the same state where the plaintiff was born and raised and where he continues to live and maintain a residence. His response to the defendant’s pointing out the lack of diversity is to assert that “[s]ince the Defendant Union Pacific Railroad Company is incorporated in Delaware their [sic] considered a citizen & therefore such corporation has citizenship in the state of Delaware in which gives this court jurisdiction [sic].” (D.I. 34 at ¶ A.) That argument ignores the plain language of section 1332, which requires this court to view the defendant as being a citizen of both Delaware and Nebraska.

Accordingly, it is hereby ORDERED that the Motion (D.I. 28) is GRANTED. All other outstanding motions are denied as moot, and all pending discovery is hereby terminated.

  
UNITED STATES DISTRICT JUDGE

November 7, 2006  
Wilmington, Delaware