

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JOHN HENRY and LORRAINE
HENRY,

Plaintiffs,

v.

Case No: 2:20-cv-935-JLB-MRM

CHUBB CUSTOM INSURANCE
COMPANY,

Defendant.

ORDER

Before the Court is Defendant's Motion to Dismiss Plaintiffs' Complaint (Doc. 6) and the parties' "Agreed Order" resolving that motion (Doc. 17).

This is an insurance coverage dispute that Defendant Chubb Custom Insurance Company ("Chubb") removed to federal court on November 25, 2020. (Doc. 1.) On December 2, 2020, Chubb moved to dismiss Plaintiffs' Complaint, stating that it did not issue the underlying policy and, instead, that Federal Insurance Company ("Federal") is the correct party to the insurance contract. (Doc. 6 at 1.) On January 8, 2021, the parties filed an "Agreed Order" purporting to resolve Chubb's Motion to Dismiss through an agreement that Plaintiff would file an Amended Complaint naming Federal as the correct Defendant. (Doc. 17.)

Despite the parties' agreement to substitute Federal for Chubb, the parties neither explain the relationship between Federal and Chubb nor provide any

indication in the record that counsel for Chubb is authorized to act on behalf of Federal. Confusingly, Chubb refers to Federal as the “Movant” in its Motion to Dismiss (see Doc. 6 at 3), but, as best the Court can tell, Federal has not filed anything in this action or otherwise appeared. A review of the underlying policy that Chubb attaches as an exhibit to its Motion to Dismiss, however, implies that Chubb is a division of Federal. (See Doc. 6-1 at 2.)

Based upon the foregoing, it is hereby **ORDERED** that:

1. The parties’ “Agreed Order,” Doc. 17, is **STRICKEN**.
2. On or before February 8, 2021, the parties are directed to show cause why the case should not be dismissed without prejudice based upon Plaintiffs’ concession of the representation in Defendants’ Motion to Dismiss that Plaintiffs have sued the wrong corporate defendant.
3. If the parties agree that the remedy for Plaintiffs’ concession is something other than dismissal of the case without prejudice but involves a corporate entity not currently a party to this lawsuit, then they shall file the appropriate papers to make that corporate entity a party to this case. The appropriate papers would include, among other things, (a) an agreed motion to amend the complaint pursuant to Federal Rule of Civil Procedure 15 to add a new defendant, (b) an appearance through counsel of the new defendant waiving service and agreeing to the motion to amend, and (c) a showing in the motion to amend that

the substitution of the new defendant in place of the current defendant will not destroy the Court's diversity jurisdiction.

ORDERED at Fort Myers, Florida, on January 25, 2021.

A handwritten signature in black ink, reading "John L. Badalamenti". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

**JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE**