IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

EMPLOYERS MUTUAL)	
CASUALTY CO.,)	
Plaintiff,)	CIVIL ACTION
v.)	No. 06-2085-KHV
LINNENBRINK)	
CONSTRUCTION, et al.,)	
Defendants.)	
)	

ORDER

Employers Mutual Casualty Company brings suit against Linnenbrink Construction and Rodino, L.P., seeking declaratory relief under 28 U.S.C. § 2201. On October 20, 2006, the Court ordered plaintiff to show good cause in writing why its claim should not be dismissed for lack of subject matter jurisdiction. See Order To Show Cause (Doc. #44) filed October 20, 2006. The Court noted that the complaint did not properly allege the citizenship of Rodino, L.P., and Linnenbrink Construction. See id. at 2.

Plaintiff's response to the Court's show cause order reveals that the parties are near settlement, but does not establish jurisdiction. Plaintiff asks this Court to refrain from dismissing the action pending the parties' filing of a stipulation of dismissal. The Court, however, cannot overlook the immediate defect with respect to subject matter jurisdiction. Indeed, the Court has an independent duty to investigate its subject matter jurisdiction at any point in the proceeding. See Tuck v. United Servs. Auto. Ass'n, 859 F.2d 842, 844 (10thCir. 1988). Because the Court is not satisfied that it has subject matter jurisdiction, it finds that the complaint should be dismissed without prejudice. If the parties are close to resolving their dispute, one may

hope that further litigation will be unnecessary.

IT IS SO ORDERED.

Dated this 8th day of November, 2006 at Kansas City, Kansas.

<u>s/ Kathryn H. Vratil</u>Kathryn H. VratilUnited States District Judge