

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**CLIFTON G. SWIGER,**

**Plaintiff,**

**v.**

**Civil Action No. 05-5725 - JCJ**

**ALLEGHENY ENERGY, INC.,  
ALLEGHENY ENERGY SUPPLY CO.,  
LLC, ALLEGHENY ENERGY SERVICE  
CORP. AND MORGAN, LEWIS &  
BOCKIUS, LLP,**

**Defendant.**

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Morgan, Lewis & Bockius LLP ("Morgan Lewis"), through its attorneys, hereby moves pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for an order dismissing Plaintiff's Complaint for lack of subject matter jurisdiction:

1. Plaintiff asserts various state law claims against all Defendants, asserting the complete diversity of the parties as the sole basis for this Court's subject matter jurisdiction. Notably, there is not complete diversity among the Defendants as defined in 28 U.S.C. § 1332(a), and thus this Court has no subject matter jurisdiction over this matter.

2. Defendant Morgan Lewis is a limited liability general partnership, whose citizenship is determined by where its individual partners are domiciled.

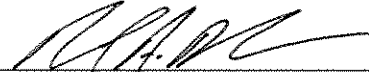
3. Some of the partners of Morgan Lewis are United States citizens who are domiciled in foreign countries. Consequently, these partners are neither citizens of a particular

state nor citizens of any foreign state for diversity purposes under 28 U.S.C. § 1332(a), which requires that a party be either a “citizen of a State” or a “citizen or subject of a foreign state.”

4. Accordingly, because the Morgan Lewis partnership consists of partners who lack any form of citizenship recognized under 28 U.S.C. § 1332(a), Plaintiff has failed to establish the existence of complete diversity among all parties. Thus, this Court lacks subject matter jurisdiction over Plaintiff’s Complaint.

**WHEREFORE**, for the reasons stated above and the reasons set forth in the accompanying Memorandum of Law, this Court should dismiss Plaintiff’s Complaint with prejudice for lack of jurisdiction.

Respectfully submitted,



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Dated: December 22, 2005