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## Lessons on the citizenship of LLCs and diversity jurisdiction

The 7th U.S. Circuit Court of Appeals has repeatedly expressed its frustration over the years with litigants' failure to properly identify and present the citizenship of limited liability companies, and other unincorporated associations, for purposes of federal diversity jurisdiction.

Litigants often mistakenly assume that an LLC, like a corporation, is a citizen of its state of organization and its principal place of business. This assumption is incorrect. The state of organization and principal place of business are, in fact, completely irrelevant to the citizenship of an LLC. Rather, the citizenship of any unincorporated association is that of all of its members and, if its members are other unincorporated associations, its members' members and so on.

Many litigants have been chided by the 7th Circuit for failing to follow Circuit Rule 28(a)(1), which states, in part, that if any party is an unincorporated association or partnership, the jurisdictional statement in the appellant's brief must "identify the citizenship of all members." A statement that merely asserts the parties are citizens of different states does not suffice.

The required analysis can be significantly complicated if an LLC party's members are also LLCs, whose members are, in turn, also unincorporated associations. In this situation, the appellant's jurisdictional statement should include the identity and citizenship of each member, through however many tiers of membership exist. Further, litigants would be wise to ensure that the full membership (or partnership) chain of an unincorporated association is pleaded at the trial court level.

The 7th Circuit's decision in *Belleville Catering Co. v. Cham-*

*paign Market Place*, 350 F.3d 691 (2003), is a striking example of the consequences for failing to do so.

In *Belleville Catering*, the complaint alleged that the corporate plaintiff was incorporated and had its principal place of business in Missouri. It also alleged that the defendant was a Delaware LLC with its principal place of business in Illinois. The defendant admitted these allegations in its answer and filed a counterclaim. A magistrate judge allowed the case to proceed to trial, which resulted in a verdict in the defendant's favor of over \$200,000.

On appeal, the 7th Circuit sua sponte ordered the parties to submit supplemental memoranda on the citizenship of the parties. At this point, multiple problems surfaced.

As it turned out, the corporate plaintiff was actually incorporated in Illinois, not Missouri. The plaintiff's counsel assumed that because the lease between the plain-

tiff and defendant referred to the plaintiff as a "Missouri corporation," it must be one. It is fair to say that the 7th Circuit was not impressed with this explanation and commented that counsel could have easily ascertained the correct state of the plaintiff's incorporation if counsel had "done what the court did: use the Internet."

The 7th Circuit also reproached defendant's counsel for simply agreeing with the inaccurate allegation in the complaint, when it could also have easily discovered plaintiff's incorporation online.



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The defendant LLC's jurisdictional memoranda revealed that several of its members were citizens of Illinois and that an additional member was an LLC that was asserting the confidentiality of the identities of its members. As a result, the court held that diversity jurisdiction had not been

There are several lessons to be learned from *Belleville Catering*. First, a plaintiff filing a case in federal court under the diversity jurisdiction statute must thoroughly investigate the citizenship of all of the parties and "secure jurisdictional details from original sources before making formal allegations." If one of the parties is an unincorporated association, this task will require ascertaining the identity and citizenship of all of the party's members, and its members' members, and so on, as needed.

Second, the defendant must not simply accept the plaintiff's jurisdictional allegations and has a duty to investigate the same. Finally, the failure to diligently determine diversity of citizenship at the trial court level can have weighty consequences. In addition to a potentially embarrassing bench-slap, an attorney's "insouciance toward the requirements of federal jurisdiction" may lead to the loss of a client's verdict and even an order to re-litigate the case for free in state court.

Moreover, failing to properly state citizenship under Circuit Rule 28 can get you into trouble even if diversity is ultimately found. In *Thomas v. Guardsmark LLC*, 487 F.3d 531 (7th Cir. 2007), the attorneys for the defendant were fined \$1,000 for failing to identify the name of the defendant's member, a partnership and the names of the partners in that partnership in a supplemental jurisdictional statement ordered by the court.

In sum, tracing the citizenship of an unincorporated association through multiple layers of members or partners is a monotonous but important task in a diversity jurisdiction case. Failure to properly investigate the details of an entity's citizenship, and present those details to the court, can be an extremely costly mistake.