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Pleading diversity jurisdiction as a federally chartered entity not easy

TULLY'S LAW

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For litigants, access to the federal courts is often a highly sought-after commodity. However, jurisdiction is not always easy to establish.

A defect in jurisdiction will result in the remand of a case to state court, as "the requirement that jurisdiction be established as a threshold matter ... is 'inflexible and without exception.' " *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1988).

Federal jurisdiction is generally established by pleading federal question or diversity jurisdiction. However, for certain types of organizations, pleading diversity jurisdiction can be challenging, if not impossible. Establishing federal jurisdiction under the diversity statute is particularly difficult for a federally chartered organization.

This article outlines some of the basic requirements to properly plead diversity for these types of organizations.

In 1916, the U.S. Supreme Court held that a corporation chartered pursuant to an act of Congress was not a citizen of any state and, therefore, could not avail itself of federal diversity jurisdiction. *Bankers Trust v. Texas & Pacific Railway,* 241 U.S. 295, 309–10 (1916). Because lower courts have uniformly interpreted the corporate rule regarding citizenship set forth in 28 U.S.C. §1332(c) to apply only to corporations formed under state law, courts continue to apply the general rule that federally chartered corporations are not citizens of any one state and therefore may not assert diversity jurisdiction. *Lehman Bros. Bank FSB v. Frank T. Yoder Mortgage Inc.*, 415 F.Supp.2d 636, 639 (E.D. Va. 2006).

For federally chartered savings associations, Congress eventually enacted a statute establishing that, for diversity purposes, these associations are considered citizens "of the [s]tate in which such savings association has its home office." 12 U.S.C. §1464(x), thus providing them with the ability to assert diversity jurisdiction in appropriate cases.

However, Congress has not enacted any legislation dealing with the citizenship of federally chartered credit unions.

To address this issue, courts have created a judicial doctrine that may allow federally charted credit unions (and other federally chartered corporations) to avail themselves of diversity jurisdiction.

A federally chartered corporation may be entitled to assert diversity jurisdiction where its activities are so localized that it may be treated as a citizen of a single state. This "localization" doctrine was first articulated in 1956 by an Oregon district court in *Elwert v. Pacific First Federal Savings & Loan Association*, 138 F.Supp. 395 (D. Or. 1956), and has since won general acceptance in numerous federal courts.

A federally chartered corporation can be deemed "localized" even if it conducts its business in more than one state. To determine if the localization doctrine applies, courts look at a variety of factors, including the corporation's principal place of business, the existence of branch offices outside the state, the amount of business transacted in different states and any other data providing evidence that the corporation is local or national in nature." *Loyola Federal Savings Bank v. Fickling,* 58 F.3d 603 (11th Cir. 1995). "No one factor is determinative and there is no clear dividing line separating geographically diverse companies from localized ones," the court explained.

Currently, courts are split as to whether federally chartered credit unions may establish diversity jurisdiction by relying on the localization doctrine. While the 7th U.S. Circuit Court of Appeals has not yet addressed the citizenship of federally chartered credit unions, it has acknowledged the viability of the localization doctrine as it applies to federally chartered corporations. *Hukic v. Aurora Loan Services*, 588 F.3d 420, 428 (7th Cir. 2009).

Additionally, at least one district court in the Northern District of Illinois has discussed the applicability of the localization doctrine to federally chartered credit unions.

In *American Airlines Federal Credit Union v. Eck*, 2018 WL 2332065 (N.D. Ill. 2018), the court evaluated whether the localization doctrine applied to a credit union headquartered in Texas. The court found that while the credit union was clearly headquartered in Texas with its principal place of business there, its intended market was national.

In reaching this conclusion, the court focused on several factors, with some emphasis placed on the credit union's website, which referred to the credit union's nationwide availability and the geographical breadth of its membership (the credit union acknowledged that 30 percent of its members were residents of Texas, while the remaining 70 percent of its members were residents of Florida, New York, California, Oklahoma, Illinois, North Carolina, Arizona, Massachusetts and a few other states.)

Based on these factors, the *Eck* court concluded that the credit union was a national citizen and thus could not rely on diversity as a basis for establishing federal jurisdiction.

Given the courts' reliance on a balancing of factors in determining whether the localization doctrine applies to federally chartered corporations and associations, diversity jurisdiction will almost always be more complex for the majority of these businesses.

When making the case for diversity jurisdiction, particular emphasis should be placed on the factors articulated in *Loyola*, especially the attributes of the business which indicate it is localized in nature.

When determining whether diversity jurisdiction is applicable, counsel should be prepared to demonstrate that the intended market exists largely within the state of localization, placing emphasis on the lack of nationwide services.

With awareness of the localization doctrine and proper focus placed on the relevant factors, counsel representing federally chartered corporations may be able to successfully establish diversity jurisdiction.

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