

Lawyer Insights

A Great River of LLCs: The Eighth Circuit's Take on Properly Assessing Diversity Jurisdiction

Business, Commercial, Bankruptcy & Employment Civil Litigation Corporations
Jurisdiction Pretrial Practice.

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Summary

- Limited liability companies derive their citizenship from their members, which can require a factor-tree-like analysis when members are other limited liability companies.
- Courts have an independent obligation to determine subject matter jurisdiction and can do so at any time.
- Failing to perform a thorough citizenship analysis up front can lead to wasted effort when subject-matter jurisdiction is later found wanting.

In September 2023, the U.S. Court of Appeals for the Eighth Circuit remanded a COVID-19 insurance recovery case to the district court on jurisdictional grounds. *See Great River Ent., LLC v. Zurich Am. Ins. Co.*, No. 21-3815, 2023 WL 5839565 (8th Cir. Sept. 11, 2023). The Eighth Circuit's decision underscores federal courts' continued scrutiny of subject matter jurisdiction—especially in complex cases involving limited liability companies (LLCs).

Background

Great River Entertainment commenced its litigation in Iowa state court. Its insurer, Zurich, removed the case to federal district court based on diversity jurisdiction under 28 U.S.C. § 1332. The district court ultimately granted the insurer's motion to dismiss on substantive coverage issues. *See Great River Ent., LLC v. Zurich Am. Ins. Co.*, No. 3:21-CV-00035, 2021 WL 5412276 (S.D. Iowa Nov. 15, 2021). The district court's opinion never addressed subject matter jurisdiction.

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On appeal, however, the Eighth Circuit focused solely on whether the litigation was properly removed to federal court. Central to the court's inquiry: Did the federal district court properly have subject matter jurisdiction over the litigation? As the Eighth Circuit explained, "[j]urisdiction is always the first and fundamental question" of federal courts. *Great River*, 2023 WL 5839565, at *1.

Fundamentally, diversity jurisdiction under 28 U.S.C. §1332 requires (i) an amount in controversy exceeding \$75,000 and (ii) complete diversity of citizenship among the parties. While seemingly straightforward for individuals and corporations, questions abound when one of the litigants is a limited liability company. This is typically because, unlike corporations, which typically have definite corporate domiciles, limited liability companies are considered to have the citizenship of all of their members.

Viewing *Great River* as a citizen of each jurisdiction in which a member resided, the court of appeals ruled that factual development in the district court was insufficient to allow the court to determine whether the parties were completely diverse. In other words, the record lacked sufficient detail to determine whether any of *Great River's* members were citizens of Illinois—the place where the insurer had its principal place of business. To the extent that any member of *Great River* was a citizen of Illinois, the parties would not enjoy complete diversity, the federal court would lack subject matter jurisdiction, and the case would be remanded to state court.

Zurich petitioned for rehearing en banc after the initial decision by the three-judge panel. The full Eighth Circuit in turn [refused to review](#) [login required] the three-judge panel's decision, so the decision of the three-judge panel stands.

The Great River of LLCs

Great River is a salient reminder that subject matter jurisdiction may be challenged at any time, even by the court sua sponte. It is critical, therefore, that litigants exercising diversity jurisdiction understand the citizenship of the parties and, where LLCs are involved, the citizenship of LLC members. Failure to do so may waste significant time and resources.

The Eighth Circuit's decision further underscores the jurisdictional complexities associated with establishing diversity jurisdiction for a modern-day LLC. Modern business organizations are often made up of a labyrinth of distinct corporate structures, including, among others, various members, managers, holding companies, and subsidiaries. Business organizations become particularly complex where an LLC's member is yet another LLC. The complexity then becomes increasingly stupefying for each additional layer of LLC in a corporate structure. As explained by another federal appellate court, in those cases, "the citizenship of LLCs often ends up looking like a factor tree that exponentially expands every time a member turns out to be another LLC, thereby restarting the process of identifying the members of that LLC." *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1220 (11th Cir. 2017).

All told, cases like *Great River* show "the difficulty of applying established diversity jurisdiction principles to 21st-century business organizations." *Id.*

Lessons Learned

Businesses litigating in federal court would be wise to assess these complicated jurisdictional issues early on to verify that their case is properly proceeding in federal court. Otherwise, businesses risk a "colossal

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waste of time and effort” as they work to sort out whether federal jurisdiction is properly invoked. *Id.* at 1228.

Great River is also a timely reminder that federal courts carefully police subject matter jurisdiction issues. Indeed, as the U.S. Court of Appeals for the Eleventh Circuit described in 2017, federal courts “must be vigilant in forcing parties to meet the unfortunate demands of diversity jurisdiction in the 21st century.” *Id.* Until the current jurisdictional analysis for unincorporated associations like LLCs is amended, putative litigants must continue to venture down the rabbit hole of citizenship for all constituent members.

Remaining mindful of federal judicial oversight not only is important to keep a case on the right track but also may be necessary to avoid sanctions under Federal Rule of Civil Procedure 11. As just one example, the U.S. District Court for the Southern District of New York sanctioned attorneys under Rule 11 for misrepresenting that a case could properly be removed to federal court. See *Rivas v. Bowling Green Assocs., L.P.*, No. 13-CV-7812 PKC, 2014 WL 3694983 (S.D.N.Y. July 24, 2014). Cases like this are indeed becoming increasingly common as jurisdictional issues grow in complexity.

In sum, modern-day businesses should think about jurisdictional issues early and often. Doing so best allows the case to be promptly litigated on the merits and may avoid jurisdictional rabbit holes that result in delays, costs, or, worse, sanctions.

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