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ALERT

Supreme Court Narrows Availability of Federal Diversity Jurisdiction for Certain Business Entities

By Mark D. Silverschotz and Carrie Maylor DiCanio

Prospective plaintiffs, in selecting what they hope to be a friendly venue for complex litigation, often tilt toward federal court, particularly where the local state court is seen as potentially favoring the adversary. Where state law claims alone are at issue, litigants are typically compelled to assert complete diversity of plaintiffs and defendants in order to gain access to a U.S. courthouse. This month, however, the U.S. Supreme Court narrowed that doorway for certain business entities.

In *Americold Realty Trust v. Conagra Foods, Inc.*, No. 14-1382, 2016 U.S. LEXIS 1652 (Mar. 7, 2016), the Supreme Court addressed how diversity jurisdiction applies to disputes involving real estate investment trusts (REITs). Although self-styled as "trusts," REITs generally are distinct legal entities that are taxable as corporations, managed by a board of directors or trustees, and have a minimum of 100 shareholders.

Under the relevant provision of U.S. Code 28 U.S.C. § 1332(c) concerning diversity jurisdiction, federal courts have jurisdiction over controversies between citizens of different states where there is complete diversity between *all* of the plaintiffs and *all* of the defendants. With respect to business entities, the rule is that a corporation is considered a citizen of the state where it is incorporated and where the corporation has its principal place of business. With respect to unincorporated organizations such as LLCs, however, the rule is that the entity is a citizen of *every state* in which *any* member or owner resides. *See, e.g., Carden v. Arkoma Associates*, 494 U.S. 185, 195-196 (1990).

In *Americold*, 2016 U.S. LEXIS 1652 at *3, the Supreme Court found that for purposes of diversity jurisdiction, a REIT, like LLCs and other unincorporated entities, "possesses the citizenship of all its members." *Id.* at *9. In *Americold*, several companies whose products were destroyed in a warehouse fire brought suit in a Kansas state court against the REIT that owned the warehouse. The REIT removed the suit to federal district court, which accepted jurisdiction. The removal went unchallenged.

On appeal, the Tenth Circuit inquired whether federal jurisdiction was appropriate. All parties argued in favor of diversity jurisdiction. The Tenth Circuit disagreed, "reason[ing] that the citizenship of any 'non-corporate artificial entity' is determined by considering all of the entity's 'members,'

ANDERSON KILL
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000

ANDERSON KILL
864 East Santa Clara Street
Ventura, CA 93001
(805) 288-1300

ANDERSON KILL
1600 Market Street, Suite 2500
Philadelphia, PA 19103
(267) 216-2700

ANDERSON KILL
1055 Washington Boulevard, Suite 510
Stamford, CT 06901
(203) 388-7950

ANDERSON KILL
1717 Pennsylvania Avenue, Suite 200
Washington, DC 20006
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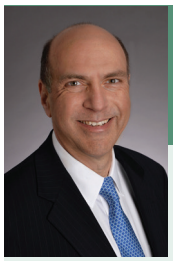
ANDERSON KILL
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858

www.andersonkill.com



who's who

Mark D. Silverschotz, of counsel in Anderson Kill's New York office and co-chair of the firm's Bankruptcy & Restructuring Group, has worked in the bankruptcy and reorganization field since 1981. He has been involved in the restructuring of scores of companies including those engaged in the real estate, retail, oil and gas, manufacturing, financial services, apparel, and entertainment industries. He also has served as special insurance counsel in multiple bankruptcies stemming from asbestos and other toxic tort liabilities, including the Celotex and Dow Corning cases, among numerous others.

msilverschotz@andersonkill.com
(212) 278-1870

Carrie Maylor DiCanio is an attorney in the firm's New York office. Ms. DiCanio concentrates her practice on corporate and commercial litigation and insurance recovery, exclusively on behalf of policyholders. Ms. DiCanio has defended international corporations against claims of price-fixing and counseled businesses with respect to compliance with U.S. competition law. Ms. DiCanio also co-chairs Anderson Kill's Women's Network.

cdicanio@andersonkill.com
(212) 278-1046

which include, at minimum, its shareholders." *Id.* at *4 (quoting *ConAgra Foods, Inc. v. Americold Logistics, LLC*, 776 F.3d 1175, 1180-1181 (10th Cir. 2015)). As the record contained no evidence "of the citizenship of Americold's shareholders, … the appeals court concluded that the parties had failed to demonstrate that the plaintiffs were 'citizens of different States' than the defendants." *Id.*

The Supreme Court affirmed, rejecting the argument "that anything called a 'trust' possesses the citizenship of its trustees alone, not its shareholder beneficiaries as well." *Id.* at *7, *9. The court also rejected the argument of *amicus* National Association of Real Estate Investment Trust that, like a corporation, a REIT should be considered "a citizen only of its State of establishment and its principal place of business." Id. at *9.

This decision is significant. A typical REIT will have hundreds of shareholders. If any one of a REIT's shareholders resides in the same state as any defendant, *Americold* makes clear that such a lawsuit will not meet the requirements of complete diversity, *i.e.*, that no plaintiff be a citizen of the same state as any defendant. In effect, *Americold* upholds the bright line rule concerning jurisdiction and corporate entities. As the Supreme Court commented, "it is up to Congress if it wishes to incorporate other entities into 29 U.S.C. § 1332(c)'s special jurisdictional rule [treating only corporations as citizens of their states of incorporation]." *Americold*, 2016 U.S. LEXIS 1652 at *9.

The court's decision in *Americold* notwithstanding, all is not lost for REITs, LLCs, other unincorporated business entities, and other prospective plaintiffs that are strongly motivated to find a path into federal court. Of course, title 28 of the U.S. Code still allows for federal question jurisdiction under various circumstances that implicate federal law specifically (11 U.S.C § 1331).

Admittedly, many — if not most — commercial disputes, including those concerning the interpretation of insurance policies, rarely address a federal statute. That said, a dispute may still properly be brought in federal court on the basis of bankruptcy jurisdiction (11 U.S.C. §1334), for example. That avenue is particularly relevant in insurance disputes involving bankruptcy, as insurance disputes typically concern only state substantive law. Many coverage lawsuits and other disputes that otherwise could not be heard in federal court are routinely resolved by bankruptcy judges. Similarly, if a suit involves maritime law, that also may provide an entry point for removal to federal court. The Supreme Court decision in *Americold*, however, will force parties to consider both the strategic advisability and the legal availability of these alternative routes.