

TYPES NOT MAPPED YET February 23, 2015 | TTR not mapped yet | Christina M. Berish

Protecting the identity of your LLC members, LP partners in litigation, Part I: Motions to remand

The situation is familiar: You represent a LLC or LP and file suit in state court to avoid disclosing the identity of your members/partners. But then the identity of those members/partners becomes an issue when the defendant removes your state court case to federal court claiming diversity jurisdiction. The contentions of the removal petition may allege diversity of the parties “upon information and belief” and then you are left to admit or refute the allegations and/or address the issue in the jurisdictional statement of your counterclaim. For privacy reasons though, your LLC or LP may not want to divulge the identity of its members/partners.

In this situation, the best way to protect the identity of your entity’s owners may be through a motion to remand. When an LLC or an LP is a party to a case, here are some common defects with removal petitions that may get your case remanded back to state court where the ownership of your LLC or LP may not be an issue (or at least a public one):

1. Complete diversity between the plaintiff(s), on the one hand, and defendant(s), on the other hand is required and it is the removing party’s burden to establish this. If the opposing party fails to sufficiently allege complete diversity due to lack of information, point that out in the motion to remand. The burden rests with the party alleging federal court jurisdiction to establish jurisdiction. “[I]t is not enough to file a pleading and leave it to the court or the adverse party to negate jurisdiction.” *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 447 (7th Cir. 2005). Frame the discussion in terms of whether the opposing party has met its burden.
2. If the opposing party alleges diversity jurisdiction using “upon information and belief” allegations, those may not be sufficient. Courts are hesitant to assert federal court jurisdiction based on “upon information and belief” allegations. *Glisson v. Matrixx Initiatives, Inc.*, No. 10-76-GPM, 2010 WL 685894, at * 3 (S.D. Ill. Feb. 22, 2010).
3. Address common defects with the citizenship allegations. If any of the parties to the case is a corporation, did the opposing party identify the corporation’s state of incorporation and principal place of business? For any individuals, did the opposing party allege where that individual is “domiciled”? It generally takes physical presence with an intent to remain there indefinitely to establish domicile. For any LLC, did the opposing party allege where each member of the LLC is a citizen? For any LP, did the opposing party allege where each partner of the LP is a citizen?
4. In the event a member of a LLC or partner of a LP is another business entity, the citizenship of that entity must also be properly alleged. *Employers Mutual Casualty Co. v. Gemini Ins. Co.*, 2014 WL 3541296, *3 (M.D. La. July 17, 2014); see also *Hart v. Terminex Int’l*, 336 F.3d 541, 543 (7th Cir. 2003) (“the citizenship of unincorporated associations must be traced through however many layers of partners or members there may be.”) (citations omitted). In other words, anytime a party is a LLC or LP, the party asserting diversity jurisdiction needs to keep drilling down through the LLCs and LPs until there is a corporation or individual, and the citizenship of that corporation or individual must be alleged.

In response to your motion to remand, the opposing side may request discovery to determine whether diversity exists. But oppose that request. While courts may be inclined to allow discovery on the monetary amount at issue (to determine whether the amount in controversy exceeds \$75,000), federal judges may deny discovery to determine whether parties are diverse, expecting that discovery to have been conducted, if need be, in the state court before filing the removal petition. *Glisson at *3*; *Sabo v. Dennis Technologies, LLC*, No. 07-cv-283-DRH, 2007 WL 1958591, *3-4 (S.D. Ill. July 2, 2007).



Practice Pointer: If you file a motion to remand based upon an incomplete or defective jurisdictional analysis, seek fees. Under the statutory removal provisions, a federal judge may award costs, including attorneys' fees, involved with filing a motion to remand. 28 USC 1447(c); *Circle Centre Mall, LLC v. Zurich Am. Ins. Co.*, 2014 WL 4539983, 4-6 (S.D. Ind. Sept. 11, 2014).

For additional strategies, please see Part II of this article: [Protecting the Identity of Your LLC Members & LP Partners in Litigation, Part II: Strategies for Discovery](#)

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