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# Litigation

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## FIFTH CIRCUIT JOINS OTHER CIRCUITS IN HOLDING THAT THE CITIZENSHIP OF AN LLC IS DETERMINED BY THE CITIZENSHIP OF ALL OF ITS MEMBERS

On September 15, 2008, the U.S. Court of Appeals for the Fifth Circuit reversed a lower court decision and joined the First, Second, Fourth, Sixth, Seventh, Eighth, Ninth and Eleventh circuits in holding that:

“ . . . like limited partnerships and other unincorporated associations or entities, the citizenship of an LLC is determined by the citizenship of all of its members.”

*Harvey v. Grey Wolf Drilling Co.*, 2008 WL 4194538 (5th Cir. September 15, 2008).

Relying on Supreme Court precedent,<sup>1</sup> case law from other circuits, and the plain language of 28 U.S.C. § 1332(c)(1), the Fifth Circuit refused to extend the law that treats corporations as citizens of both the state of incorporation and the state where it has its principal place of business, to unincorporated entities such as a Limited Liability Company (“LLC”).

### A. Background

*Harvey v. Grey Wolf Drilling Company* concerned tort claims brought by the heirs and survivors of the estate of a worker who died after slipping and falling on ice

at a land-based drilling rig owned by Grey Wolf Drilling Company, L.P. Plaintiffs filed a lawsuit in federal court in the Eastern District of Louisiana, relying on diversity of citizenship as the basis for federal court jurisdiction.

For federal court jurisdiction premised on the diversity of citizenship of the parties, there must be ‘complete diversity’ of the litigants, “requiring that all persons on one side of the controversy be citizens of different states than all persons on the other side.” 28 U.S.C. §1332. *McLaughlin v. Mississippi Power Co.*, 376 F.3d 344, 353 (5th Cir. 2004).

The plaintiffs, the worker’s surviving family, were all citizens of Louisiana. The defendants included James A. Whitson, an individual and a citizen of Texas and Grey Wolf Drilling Company, L.P. (“Grey Wolf”), the owner of the oil rig. Grey Wolf was a Texas limited partnership with two members: (1) Grey Wolf Holdings Company, a Nevada corporation with its principal place of business in Texas; and (2) Grey Wolf L.L.C., a limited liability company organized in Louisiana and comprised of one member, Grey Wolf Holdings Company.

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<sup>1</sup> See *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96, 110 S.Ct. 1015, 1021-22 (1990) (holding that the citizenship of an unincorporated entity or association, such as a partnership, is based upon the citizenship of each of its members).

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Because the plaintiffs were all citizens of Louisiana and Whitson was a citizen of Texas, the district court looked to the citizenship of Grey Wolf’s partners in determining complete diversity. *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96, 110 S.Ct. 1015, 1021-22 (1990) (citizenship of a limited partnership is based upon the citizenship of each of its members). Grey Wolf Holdings Company, as a corporation, was a citizen of Nevada, its state of incorporation, and Texas, its principal place of business. The court then looked to the citizenship of Grey Wolf’s second partner – Grey Wolf L.L.C.

The district court held that Grey Wolf was a Louisiana citizen because 28 U.S.C. § 1332(c) should be read dynamically and interpreted to include an L.L.C. - an organization created after the statute was adopted - because its characteristics are similar to that of a corporation. Upon finding that complete diversity was lacking, the district court dismissed the case for lack of subject matter jurisdiction.

**B. The Court’s Analysis**

Addressing the issue of an L.L.C.’s citizenship as one of first impression in the Fifth Circuit, the Court of Appeals pointed out that the district court’s decision was based almost entirely on the reasoning of a law review article.<sup>2</sup> The Fifth Circuit relied instead on Supreme Court precedent,<sup>3</sup>

case law from other circuits and the plain language of 28 U.S.C. § 1332(c)(1) to reverse the lower court’s decision.

While the Supreme Court had not previously addressed the question of how to determine the citizenship of an L.L.C. for the purposes of diversity jurisdiction, the Fifth Circuit cited to previous rulings where the Supreme Court refused to treat unincorporated associations as corporations for diversity purposes. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96, 110 S.Ct. 1015, 1021-22 (1990) (“[w]hile the rule regarding the treatment of corporations as ‘citizens’ has become firmly established, we have... just as firmly resisted extending that treatment to other entities.”); *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 20 S.Ct. 690 (1900) (the limited partnership association under Pennsylvania law, while a “quasi corporation” is not a sufficient reason for regarding it as a corporation within the jurisdictional rule).

The Fifth Circuit also noted that all federal appellate courts that addressed the issue treat L.L.C.’s in the same manner as limited partnerships and other unincorporated associations whose citizenship is determined by the citizenship of all its members. Lastly, looking to the plain statutory language, the Fifth Circuit concluded that the plain language of section 1332(c)(1) is on its face not applicable to unincorporated associations.<sup>4</sup>

Under this approach, the Court of Appeals reversed the district court and concluded that the citizenship of an L.L.C. as an unincorporated association<sup>5</sup> is determined by the citizenship of all its members. Accordingly, the Court ruled that complete diversity was present because Grey Wolf is a citizen of Nevada and Texas and not Louisiana

The decision provides further clarity on how courts will treat this important question of federal diversity jurisdiction. The Fifth Circuit joins the Second, Fourth, Sixth, Seventh, Eighth, Ninth and Eleventh circuits with its holding. The Third Circuit,<sup>6</sup> Tenth Circuit<sup>7</sup> and the DC Circuit<sup>8</sup> have not yet addressed the issue and no circuit has ruled contrary to the Fifth Circuit’s ruling.

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<sup>2</sup> Debra R. Coben, *Limited Liability Company Citizenship: Reconsidering An Illogical and Inconsistent Choice*, 90 Marq.L.Rev. 269 (2006).  
<sup>3</sup> *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96, 110 S.Ct. 1015, 1021-22 (1990) (holding that the citizenship of an unincorporated entity or association, such as a partnership, is based upon the citizenship of each of its members).  
<sup>4</sup> In the limited case of class actions, Congress created a limited exception to *Carden’s* rule of citizenship for unincorporated associations. *See* 28 U.S.C. §1332(d)(10).  
<sup>5</sup> *See* Louisiana Revised States §12:1301(a)(10).  
<sup>6</sup> This issue was most recently addressed in the Third Circuit by a district court in *Dent v. Cingular Wireless, L.L.C.*, 2007 WL 1797653 (D.N.J. June 20, 2007) (holding that citizenship of defendant L.L.C. is determined by citizenship of its members).  
<sup>7</sup> This issue was most recently addressed in the Tenth Circuit by a district court in *HFR, Inc. v. Hildyard II, M.D.*, 2007 WL 4374174 (D. Kan. Dec. 13, 2007) (holding that for the purposes of determining diversity jurisdiction an L.L.C. is a citizen of each state of which a member is a citizen); *see also Plummer v. Geostar Corp.*, 2007 WL 2572401 (D. Utah Sept. 5, 2007).  
<sup>8</sup> This issue was most recently addressed in the D.C. Circuit by a district court in *Matab Holdings, L.L.C. v. Mega Group Inc.*, 2008 WL 2901208 (D.C.D. July 24, 2008) (holding that citizenship of L.L.C. is determined by citizenship of its members).

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