

DETERMINING THE CITIZENSHIP OF BUSINESSES

People forming a new business and selecting between the different entity types may be unaware of the impact the formation choice can have on future lawsuits. In particular, the citizenship of the business can be critical to determining whether a case belongs in state court or federal court when a dispute involves over \$75,000. With the many considerations business owners have to weigh when forming a new entity, the effect on hypothetical litigation is unlikely to be of primary importance, but it is useful to keep in mind.

The key inquiry when determining whether a federal court has jurisdiction over many business disputes, especially contract disputes, is whether the parties are citizens of different states—that is, whether there is diversity jurisdiction. A business's citizenship for purposes of diversity jurisdiction often is *not* the same as where the business is registered, especially for limited liability companies (LLCs) and partnerships.

Corporations are citizens of both the state where it is incorporated and the state where its principal place of business is located. For an LLC, the analysis is more complicated, and depends on the citizenship of each member. For example, if an LLC has four members—two citizens of Wisconsin, one a citizen of Illinois, and one a citizen of Iowa—the LLC is a citizen of Wisconsin, Illinois, and Iowa. Occasionally, an LLC has so many members it is difficult to assess its citizenship, especially when any members are themselves LLCs or other corporate entities. Similarly, the citizenship of a partnership depends on the citizenship of each partner. That means an LLC or partnership with members or partners in multiple states may be more limited in the ability to invoke the jurisdiction of federal courts for ordinary contract disputes, because disputes with citizens of any of the same states that are not based on federal causes of action will not be within the jurisdiction of federal courts. Whether that is good or bad strategically depends in large part on the circumstances of the particular dispute.

Sometimes parties have tried to get around the complications of the citizenship analysis by appointing an agent to enforce their rights, often when there are many real parties in interest. Though cases have reached conflicting results, several courts have held that the citizenship of the agent does not control. Courts then analyze the citizenship of each represented business or individual.

For many businesses, planning for unforeseen litigation can be like planning to be struck by

lightning—you never want to experience it, you can't predict it, and if you're lucky, you can avoid it. Even still, it can be useful to know what to expect if a lawsuit arises.

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