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REIT Citizenship and the Impact of *Americold Realty Trust* on Jurisdictional Challenges

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On March 7, 2016, the Supreme Court ruled unanimously in Americold Realty Trust v. ConAgra Foods, Inc. *that unincorporated entities organized as "real estate investment trusts" (REITs) under Maryland law are citizens of every state in which at least one of their shareholders is a citizen. Although the case specifically addresses Maryland REITs, Justice Sonia Sotomayor's holding appears broad enough to apply to any manner of statutory trusts or similar entities organized under various states' laws. This case will steer more litigation where REITs and other unincorporated entities are parties into state courts—not federal courts.*

Diversity of Citizenship: A Primer

Federal courts have two types of jurisdiction: federal question jurisdiction and diversity jurisdiction, where the case is between citizens of different states and the amount in controversy exceeds the statutory minimum (currently $75,000). "Complete diversity" is required for diversity jurisdiction, so that there can be no overlap between the citizenship of the parties. If any one of multiple plaintiffs is a citizen of the same state as any one of multiple defendants, there is no diversity jurisdiction.

When this discussion is limited to human beings, determining diversity jurisdiction is a cut-and-dried exercise of examining where each person is a citizen. Corporations are similar, but with a twist: they are considered citizens of both (1) the state where they are incorporated, and (2) the state where they have their principal place of business. So, a corporation can be a citizen of two states for purposes of determining diversity jurisdiction. But things get considerably more complicated when cases involve unincorporated, non-human entities such as partnerships or limited liability companies (LLCs). They are considered citizens of every state where any of their members is a citizen.

So, partnerships and LLCs must trace back their lines of ownership to either a human or a corporation. Thus, for example, if two LLCs were adverse parties in federal court, that court would only have jurisdiction

if every member of LLC #1 were diverse from every member of LLC #2. To add further complication, if one of the members of an LLC is itself another LLC, then the citizenship inquiry must continue along the chain of membership until the court arrives at a person in the eyes of the law—*i.e.,* either a human being or a corporation. It is easy to imagine that this analysis can become very complex as entities are added to the mix.

Until *Americold*, however, the Supreme Court had provided little guidance regarding how to determine diversity of citizenship for unincorporated business trusts created by state law.

The *Americold* Opinion

As a relatively recent creation of state law, entities such as REITs had previously given courts headaches. It was clear that diversity jurisdiction for unincorporated entities should be determined by the citizenship of its members—but who exactly are the members of a trust?[1] Americold argued that, as a trust, only its trustees' citizenship should matter for determining diversity. ConAgra disagreed, arguing that the citizenship of Americold's trustees and its shareholders should count.

The Supreme Court agreed with ConAgra. Looking to Maryland law, Justice Sotomayor noted that a REIT's "shareholders have 'ownership interests' and votes in the trust by virtue of their 'shares of beneficial interest.'"[2] The Court drew the analogy to shareholders in a joint-stock company and the partners of a limited partnership, "both of whom [the Court] viewed as members of their relevant entities" for diversity purposes.[3] The Court therefore concluded that for the purposes of diversity jurisdiction, a REIT's members include its shareholders.

The Court also addressed the "confusion regarding the citizenship of a trust," calling it "understandable and widely shared," because a traditional trust cannot be sued; rather, any lawsuit must be brought instead against the trustees "in their own name."[4] But a REIT, though labeled a "trust," is actually a "'separate legal entity' that itself can sue or be sued."[5] The Court accordingly declined to "limi[t] an entity's membership to its trustees just because the entity happens to call itself a trust."[6]

What This Means Moving Forward

Although *Americold* expressly dealt with a REIT organized under Maryland law, the language of the opinion appears broad enough to encompass any number of state-based, unincorporated entities. This circumstance presents two challenges moving forward.

First, the *Americold* ruling means that state-based, unincorporated entities like a REIT face a steep climb if they want to get their cases heard in federal court. The more shareholders or owners the entity has, the more likely it is that just one of those individuals' citizenships overlaps with that of the opposing party. Most

[1] Note that the "trust" discussed in the *Americold* decision is not a "trust" in the traditional sense of the word. Traditionally, a trust is not an entity, but the title for a fiduciary relationship between a trustee and beneficiary where some property is held by the former for the latter's benefit. The kind of trust that *Americold* addressed, however, was an unincorporated entity created through various states' laws—in this case, a REIT organized under Maryland law, the purpose of which was to hold and manage property for the benefit of its shareholders. Thus, while REITs share the title of "trust," they have much in common with other unincorporated entities such as LLCs or partnerships.

[2] *Americold Realty Trust v. ConAgra Foods, Inc*., No. 14-1382, slip op. at 4 (U.S. Mar. 7, 2016).

[3] *Id*.

[4] *Id*. at 5.

[5] *Id*.

[6] *Id*.

pressingly, any such entities that are engaged in ongoing litigation in a federal court should immediately question whether the *Americold* case strips them of jurisdiction. Because a challenge to a federal court's subject matter jurisdiction can be raised at any time during the life of a case, an entity with a shaky jurisdictional foundation should never presume that it is safe.

Second, a REIT or similar entity that frequently finds itself in the courtroom but has a strong preference for federal court may want to take a hard look at its organizational form. If appearing in a federal court is a top priority, then it may be worthwhile to incorporate that entity.

As a final note, those clients who are concerned about possible future jurisdictional challenges should consider techniques to mitigate this risk. For example, an airtight arbitration provision would intercept most, if not all jurisdictional challenges to a contract-based dispute. Alternately, entities looking to file suit in federal district court may consider selecting a forum where the state-based courts would be as favorable as possible, should a jurisdictional challenge be upheld.

If you have any questions about the content of this alert please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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