

INSIGHTS

BY

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Ben Aaron assists clients with a variety of legal issues, including complicated commercial disputes and personal injury matters. Ben is included in the 2022 edition of Best Lawyers: Ones to Watch for Criminal Defense: General Practice and Personal Injury Litigation - Plaintiffs.
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STATELESS PARTNERS IN FEDERAL COURT

by Benjamin C. Aaron

Federal courts are courts of limited jurisdiction, meaning that they cannot hear every case that comes before them. There must be some basis for federal courts to exercise jurisdiction. Diversity jurisdiction is a familiar example: under 28 U.S.C. § 1332, federal courts have jurisdiction in cases where the amount in controversy exceeds \$75,000 and is between citizens of different states.

But as we learned in law school, determining whether a federal court has diversity jurisdiction can be difficult. Regarding the amount in controversy: if the amount in controversy equals \$75,000, is there diversity jurisdiction? (No. The amount in controversy must exceed \$75,000.) What if a party is also seeking interest and costs? (Still no. Interest and costs are excluded.) Does the plaintiff's demand determine whether the amount-in-controversy requirement is satisfied? (Generally, yes, if the demand is made in good faith.)

Regarding diversity of citizenship: when do you determine a party's citizenship? (At the time the complaint is filed.) What does diversity mean? (Complete diversity: each plaintiff's citizenship must differ from each defendant's citizenship.)

Here is a hypothetical that you may not have considered: assuming that the amount-in-controversy requirement is met, can a federal court exercise diversity jurisdiction in a case involving a partnership with a partner who is a United States citizen living abroad? According to every circuit that has addressed the question, the answer is no.

The Third Circuit's decision in *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179 (3d Cir. 2008), provides a nice overview of the issue. In that case, the plaintiff filed suit in federal court against his former employer and his former employer's law firm, asserting a number of state-law claims. The plaintiff alleged that the federal court had diversity jurisdiction. The law firm moved to dismiss for lack of subject-matter jurisdiction because among the law firm's partners was a dual citizen of the United States and United Kingdom who

was domiciled in the United Kingdom. The district court granted the law firm's motion and dismissed the case.

By way of background, the Third Circuit noted a few principles of diversity jurisdiction: natural persons are citizens of the state where they are domiciled. Corporations are citizens of both their state of incorporation and the state where they have their principal place of business. But for partnerships and unincorporated associations, courts look to the citizenships of all the partners or members to determine if there is diversity jurisdiction.

The Third Circuit noted another important principle: that § 1332 grants federal courts jurisdiction in cases involving citizens of different states. And under Supreme Court precedent, when a United States citizen is living abroad, the person is not domiciled in a particular state, so the person is "stateless" for purposes of diversity jurisdiction. *Swiger*, 540 F.3d at 184 (citing *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989)). As a result, "American citizens living abroad cannot be sued (or sue) in federal court based on diversity jurisdiction . . ." *Id.*

In applying these principles to the facts in *Swiger*, the Third Circuit held that the law firm's stateless partner (a United States citizen living abroad) prohibited a federal court from exercising diversity jurisdiction in the case. The Third Circuit concluded, as earlier courts also had, that "if a partnership has among its partners any American citizen who is domiciled abroad, the partnership cannot sue (or be sued) in federal court based upon diversity jurisdiction." *Id.* (citations omitted). Because the law firm had a stateless partner, diversity jurisdiction was unavailable, and the district court's judgment dismissing the case was affirmed. (And in case you were wondering, the stateless partner's dual citizenship made no difference: alienage jurisdiction under § 1332(a)(2) was not available because, "for purposes of diversity jurisdiction, only the American nationality of a dual national is recognized." *Id.* at 185 (quoting *Frett-Smith v. Vanterpool*, 511 F.3d 396, 400 (3d Cir. 2008)).)

The Seventh Circuit recently endorsed the reasoning in *Swiger* and held that “a partnership made up of at least one stateless citizen is itself stateless and cannot be sued in diversity.” *Page v. Democratic Nat’l Comm.*, 2 F.4th 630, 637 (7th Cir. 2021). The court noted that “[e]very other circuit to have confronted the question has reached the same conclusion” and, in addition to *Swiger*, cited decisions from the First, Second, and Fifth Circuits. *Id.* at 637-38.

The upshot is that, according to every circuit that has addressed the issue, a federal court cannot exercise diversity jurisdiction in a case involving a partnership with a stateless partner. If you have a case in federal court involving an unincorporated association, be sure to look out for this issue.

And given that law firms are often organized as unincorporated associations, keep this potential jurisdictional issue in mind if a law firm is a party to a case in federal court. Besides the Third Circuit’s decision in *Swiger* and the Seventh Circuit’s decision in *Page* (which also involved a law firm), law firms appear in multiple cases recognizing this issue, including *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60 (2d Cir. 1990), *Herrick Co., Inc. v. SCS Communications, Inc.*, 251 F.3d 315 (2d Cir. 2001), *Firefighters’ Ret. Sys. v. Citco Grp. Ltd.*, 796 F.3d 520 (5th Cir. 2015), and *ISI Intern., Inc. v. Borden Ladner Gervais LLP*, 316 F.3d 731 (7th Cir. 2003).

Remember that the defense of lack of subject-matter jurisdiction is never waived and can be raised at any time, even on a court’s own motion on appeal. And if there is no jurisdiction, the case must be dismissed. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908), is a good example. There, the plaintiffs filed suit in federal court against a railroad company. The plaintiffs prevailed, and the railroad company appealed. Although no party had questioned jurisdiction, the Supreme Court stated that it had a duty to ensure that there was jurisdiction. After noting that there was no diversity of citizenship and no federal question, the court concluded that there was no jurisdiction, reversed the judgment, and remanded the case to the trial court with instructions to dismiss the case for lack of jurisdiction. The plaintiffs had to start over in state court. Do not let that happen in your case.

Whenever you have a case in federal court, you should be on the lookout for potential jurisdictional issues. And unincorporated associations (especially those with several partners or members) can easily destroy diversity and deprive a federal court of jurisdiction. Ensure that the federal court has jurisdiction. Otherwise, you may end up in state court.



NH SPOTLIGHT

We took the opportunity to sit down with Morgan L. Burkett to learn more about her background and recent law school experience. Morgan joined Neal & Harwell in September 2021.



Morgan Burkett is a recent graduate of the The University of Tennessee College of Law. She earned her undergraduate degree from The University of Florida. Morgan is currently practicing under Supervised Practice Pursuant to Tenn. Sup. Ct. R. 7, Sec. 10.04. Her supervising attorney is Stephen M. Montgomery. Contact: mburkett@nealharwell.com

Stadium in May 2021. It was the first time a Volunteer graduation ceremony had been held in the stadium. It was a historical moment and a historic year for all.

My law school experience may not have been what I expected but it provided me the opportunity to overcome and adapt to unexpected life challenges. The pandemic prepared me for whatever lies ahead. I welcome this next chapter.

1. Can you tell us about your background and how you made the decision to become a lawyer?

From a young age I knew I wanted to be an attorney. A myriad of factors influenced my decision to pursue a legal career. I come from a law enforcement background where I was exposed to elements of criminal law, the judicial system and forensic accounting. My parent's careers provided a unique insight into the principles of justice, complexity of financial investigations, and societal impact from helping others. My parents inspired me to pursue my individual career path and interests. I decided to go to law school because I wanted to be the person that made a true legal difference in this world.

2. How was your law school experience during a pandemic?

Attending law school during a global pandemic is a memory that time will never erase. I left the University of Tennessee College of Law for spring break in March 2020, not knowing that I would not return to the law school classrooms until January 2021. I missed a year of the "typical" law school experience to include participation in peer study groups, student organization meetings, networking events, etc.

There was a significant learning curve for professors and students transitioning from the classroom to navigating law school classes online, especially during exams. This learning environment was far more challenging for all and it easily allowed for outside distractions. Remote learning limited dialogue between students and professors. It limited learning from professor experiences and their important insight.

Fortunately, the University of Tennessee College of Law Class of 2021 was able to celebrate the important milestone of law school graduation with an in-person ceremony. The commencement ceremony took place in the Neyland

3. What might people be surprised to know about you?

People may be surprised to know, that in addition to becoming an attorney, I am also a licensed Certified Public Accountant (CPA). CPA state licensure requirements include education and work experience. I attended the University of Florida where I earned my Bachelor of Science in Accounting and my Master of Accounting within four years. I studied for the four CPA exams in addition to my graduate studies.

I completed the minimum 2,000 work hours while I attended law school on a full-time basis. Working while attending law school was the most difficult endeavor for me to date. I gained invaluable work experience while balancing my academic curriculum and demands. Structure and time management were essential to my success. I became officially licensed as a CPA by the State of Tennessee one month after law school graduation.

4. Best advice you received from a role model/mentor?

One of the greatest gifts that my parents gave me was instilling within me a strong work ethic at a young age. My Dad taught me that a strong work ethic is essential and leads to the path of success and great accomplishments. One particular quote/words of advice that came from my Dad has always resonated and had significant meaning for me.

Those words of wisdom were: "If you're early, you're on time. If you're on time, you're late. If you're late, you're doomed."

This advice was inspirational to me because my Dad's boss relayed it to him on the first day of what would become a long and successful law enforcement career. The advice has translated to all facets of my life. My mental attitude towards timeliness and respect of other's time is and will be a key to my success.

NH NEWS

24 Neal & Harwell Attorneys Recognized by Best Lawyers® 2022

16 Neal & Harwell, PLC attorneys are recognized by The Best Lawyers in America© 2022. Additionally, 8 Neal & Harwell, PLC attorneys are recognized in the 2022 edition of Best Lawyers: Ones to Watch.

The Neal & Harwell attorneys selected for Best Lawyers® inclusion are:

- **Lisa P. Binder** – Family Law, Family Law Mediation;
- **Thomas H. Dundon** – Commercial Litigation, Criminal Defense: White-Collar;
- **Philip N. Elbert** – Medical Malpractice Law – Plaintiffs, Personal Injury Litigation – Plaintiffs;
- **Ronald G. Harris** – First Amendment Law;
- **Aubrey B. Harwell III** – Commercial Litigation, Criminal Defense: White-Collar;
- **Aubrey B. Harwell Jr.** – Bet-the-Company Litigation, Commercial Litigation, Criminal Defense: White-Collar;
- **Philip D. Irwin** – Commercial Litigation, Product Liability Litigation- Defendants;
- **James R. Kelley** – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, Litigation – Bankruptcy, Tax Law;
- **Marc T. McNamee** – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, Litigation – Bankruptcy;
- **Stephen M. Montgomery** – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law;
- **John E. Quinn** – Commercial Litigation, Personal Injury Litigation – Defendants;
- **William T. Ramsey** – Criminal Defense: White-Collar;
- **Kendra E. Samson** – Commercial Litigation;
- **James F. Sanders** – Criminal Defense: White-Collar;
- **James G. Thomas** – Commercial Litigation, Criminal Defense: White-Collar; and
- **David G. Thompson** – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, Corporate Law.

The Neal & Harwell attorneys selected for Best Lawyers: Ones to Watch inclusion are:

- **Benjamin C. Aaron** – Criminal Defense: General Practice, Personal Injury Litigation – Plaintiffs;
- **William J. Harbison II** – Civil Rights Law, Commercial Litigation, Mass Tort Litigation/Class Actions-Defendants;
- **Callie K. Hinson** – Family Law;
- **Erik C. Lybeck** – Commercial Litigation, Criminal Defense: White-Collar, Eminent Domain and Condemnation Law;
- **Moziano S. Reliford III** – Commercial Litigation, Criminal Defense: White-Collar, Entertainment and Sports Law;
- **Nathan C. Sanders** – Appellate Practice, Commercial Litigation, Litigation – Securities;
- **Marie Tedesco Scott** – Criminal Defense: White-Collar; and
- **Jeffrey A. Zager** – Appellate Practice, Commercial Litigation, Medical Malpractice Law – Plaintiffs.

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Best Lawyers: Ones to Watch



NH NEWS



Moziano "Trey" S. Reliford III Selected to L'Evate Class of 2022

Neal & Harwell attorney **Moziano "Trey" S. Reliford III** has been selected as a member of the L'Evate Class of 2022. L'Evate aligns business and community leaders to learn, interact, and engage with the Donelson, Hermitage, Old Hickory, City Side and surrounding communities.

William "Jay" J. Harbison II Selected to Nashville Bar Foundation Leadership Forum 2022 Class

Neal & Harwell attorney **William "Jay" J. Harbison II** has been selected to the Nashville Bar Foundation Leadership Forum (NBFLF) 2022 Class.



In 2014, the Nashville Bar Foundation (NBF) established the NBF Leadership Forum—a local leadership program for lawyers with three to eight years of experience—designed to bring together emerging leaders who participate in monthly workshops for nine months to help them realize their potential and to benefit the legal profession and our local community.

About the Nashville Bar Association

The Nashville Bar Association, established in 1831, is a professional organization serving the legal community of Nashville, Tennessee. The NBA—with almost 3,000 members—is the largest metropolitan bar association in Tennessee.



Neal & Harwell Wins "Fastest Firm Award" at the 18th Annual Nashville Bar Association Race Judicata

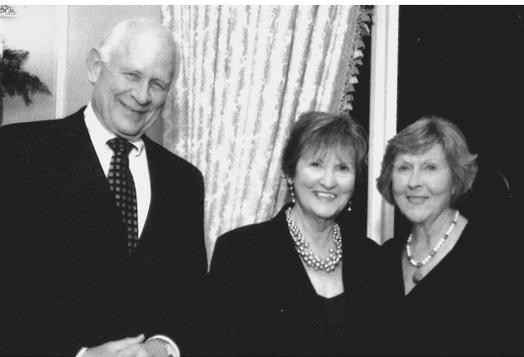
Neal & Harwell attorneys **David Thompson**, **Callie Hinson**, and **Trey Harwell** won the "Fastest Firm Award" at the 18th Annual Nashville Bar Association Race Judicata. Neal & Harwell was a proud sponsor of Race Judicata this year. Proceeds from the race will be divided among two local nonprofit organizations: ABLE Youth and Achilles International Nashville.

NEAL | HARWELL | 50

ATTORNEYS AT LAW | *years*

In February 1971, James F. Neal and Aubrey B. Harwell, Jr. announced the formation of Neal, Karzon & Harwell, predecessor to Neal & Harwell.

Neal & Harwell is proud to celebrate **50 years** of serving our clients and community.



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We cannot accept representation on a new matter from either existing clients or new clients until we know that we do not have a conflict of interest that would prevent us from doing so. Therefore, please do not send us any information about any new matter that may involve a potential legal representation until we have confirmed that a conflict of interest does not exist and we have expressly agreed in writing to the representation. Until there is such an agreement, we will not be deemed to have given you any advice, any information you send may not be deemed privileged and confidential, and we may be able to represent adverse parties.