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## Another Opportunity offered to Defendant to Establish Diversity Jurisdiction

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Determining citizenship for non-public LLC's is a complex task, compared with doing so for individuals whose citizenship, domicile and permanent residency can be uncovered from public and private databases. This task is a necessary evil of federal litigation, where the subject matter jurisdiction arises out of diversity jurisdiction (28 U.S.C §1332), because there must be complete diversity between the parties on opposite sides of the "v."

A corporation's citizenship can often be determined by a combination of their state of incorporation, headquarters or principal place of business, for example. For an LLC, however, the state of formation is irrelevant; rather, citizenship is determined by each of its members' domicile on the date of the filing of the lawsuit. Its members can be comprised of both individuals and separate entities. The complexity of the task grows because the identity of the individual and entities comprising an LLC is not always readily available, and the question becomes, How does one determine the citizenship, domiciles, permanent residencies, states of incorporation, principal places of business of unidentified individuals and entities? This task can sometimes be accomplished through limited jurisdictional discovery.

Defendant Hiscox Insurance in *Thor Equities LLC v. Hiscox Ins.*, 1:22-cv-07790 had removed the action from New York State Court to the United States District Court for the Southern District of New York premised upon diversity jurisdiction. District Judge Jennifer L. Rochon ordered Hiscox shortly thereafter to amend its notice of removal to establish complete diversity jurisdiction as to plaintiff Thor Equities LLC. Specifically, Judge Rochon opined that Hiscox had failed to properly allege the citizenship of each member of the plaintiff LLC in the notice of removal, warning that the court would remand to state court absent a showing of complete diversity. As cited by Judge Rochon in her order, a limited liability company is deemed to be a citizen of each state of which its members are citizens. See, e.g., *Handelsman v. Bedford Vill. Assocs. L.P.*, 213 F.3d 48, 51-52 (2d Cir. 2000).

Hiscox alleged in response that the citizenship of one of the member LLCs comprising Thor Equities LLC was unknown and sought jurisdictional discovery. The court ordered plaintiff to respond to limited interrogatories on this jurisdictional issue, but this discovery did not bear sufficient fruit. Hiscox identified at least 17 members of that LLC, including 12 individuals and 5 limited liability companies but could not determine their respective citizenships.

After this unfortunate plot twist, the court was forced to remand the case back to state court. As Judge Rochon held, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded' to the state court from which it was removed. 28 U.S.C. § 1447(c). 'A district court may not assume subject-matter jurisdiction when the record does not contain the necessary prerequisites for its existence.'" *Platinum-Montaur Life Scis., LLC v. Navidea Biopharms., Inc.*, 943 F.3d 613, 618. (2d Cir. 2019). *Thor Equities, LLC Plaintiffs v. Hiscox Ins. Co. Inc.*, No. 1:22-cv-07790 (JLR), 2022 U.S. Dist. LEXIS 195219, at \*2 (S.D.N.Y. Oct. 26, 2022).

It is often difficult to identify the members of LLCs before filing suit. Parties seeking to initiate suit in federal court may benefit from pre-complaint discovery applications to aid in establishing jurisdiction. However, removal deadlines under the federal removal statute (28 U.S. Code § 1446) and applicable state rules (here, New York's Civil Practice Law and Rules § 325) may not afford defendants enough time to seek that discovery, requiring them to seek leave of a court for jurisdictional discovery. Effective use of jurisdictional discovery is a necessary tool in a practitioner's tool belt. Where there is doubt about the citizenship of LLC members, it behooves the practitioner who brings initiates or removes a case to federal court to promptly seek leave of the court to obtain limited jurisdictional discovery.

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