Diversity of Citizenship:

The Basics

A diversity of citizenship case is one of two types of cases a federal court can hear. The other is a federal question case. **[Footnote 1]**

A diversity of citizenship case is a civil case, with a dollar amount which must be met, known as the amount in controversy. It is a case originally filed in state court that could have been filed in federal court.

In a diversity of citizenship case the proper citizenship must exist both when the action is commenced at the state level and when the petition for removal is filed at the federal level:

"In *Gibson v. Bruce*, 108 U.S. 561, it was decided that under the act of March 3d, 1875, c. 137, a suit could not be removed on the ground of citizenship unless the requisite citizenship existed both when the suit was begun and when the petition for removal was filed." Houston & Texas Central Railroad Company & Others v. Shirley: 111 U.S. 358, at 360 (1884).

http://books.google.com/books?id=HnIUAAAAYAAJ&pg=PA360#v=onepage&q&f=false

"The provisions of that act are reproduced in the third subdivision of section 639 of the Revised Statutes, and it was and is essential, in order to such removal, where there are several plaintiffs or several defendants, that all the necessary parties on one side must be citizens of the State where the suit is brought, and all on the other side must be citizens of another State or States, and the proper citizenship must exist when the action is commenced as well as when the petition for removal is filed. *Sewing Machine Cases*, 18 Wall. 553; *Vannevar v. Bryant*, 21 Wall. 41; *Bible Society v. Grove*, 101 U.S. 610; *Cambria Iron Company v. Ashburn*, 118 U.S. 54; *Hancock v. Holbrook*, 119 U.S. 586; *Fletcher v. Hamlet*, 116 U.S. 408." Young v. Parker's Administrator: 132 U.S. 267, at 270 thru 271 (1889).

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"2. The case was not removable from the state court, unless it appeared affirmatively in the petition for removal, or elsewhere in the record, that at the commencement of the action, as well as when the removal was asked, Stevens and Mirick were citizens of some other State than the one of which the plaintiff was, at

those respective dates, a citizen. *Gibson v. Bruce*, 108 U.S. 561, 562; *Houston & Texas Central Railway v. Shirley*, 111 U.S. 358, 360; *Mansfield, Coldwater & c. Railway v. Swan*, 111 U.S. 379, 381; *Akers v. Akers*, 117 U.S. 197." Stevens v. Nichols: 130 U.S. 230, at 231 thru 232 (1889).

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In strict terms, diversity of citizenship refers to the status of the parties to a suit which is being removed to federal court (circuit court) on this ground. Only parties that have a real interest in the outcome of the suit are to be considered for this purpose. Nominal parties are excluded.

Being a citizen of a State of the Union is the general criteria. However, the exception is for an alien; that is, a foreign citizen or subject, living in this country or aboard.

A corporation is a citizen of two states, generally. The one in which it is incorporated and the other in which it is headquartered.

A partnership, or a limited liability company, is a citizen of the states of which its constituent partners (members) are.

An individual who is a citizen of the United States must aver that he or she is a citizen of the United States and a citizen of a State of the Union, for purposes of diversity of citizenship. If one does not aver that he or she is a citizen of the United States, then the presumption will be that he or she is not a citizen of the United States:

"The petition avers, that the plaintiff, Richard Raynal Keene, is a citizen of the state of Maryland; and that James Brown, the defendant, is a citizen or resident of the state of Louisiana, holding his fixed and permanent domicil in the parish of St. Charles. The petition, then, does not aver positively, that the defendant is a citizen of the state of Louisiana, but in the alternative, that he is a citizen or a resident. Consistently with this averment, he may be either.

. . . A citizen of the United States may become a citizen of that state in which he has a fixed and permanent domicil; ***but the petition DOES NOT AVER that the plaintiff is a citizen of the United States***. . . .

The decisions of this court require, that the averment of jurisdiction shall be positive, and that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.

The answer of James Brown asserts, that both plaintiff and defendant are citizens of the State of Louisiana.

Without indicating any opinion on the question, whether any admission in the plea can cure an insufficient allegation of jurisdiction in the declaration, we are all of opinion that this answer does not cure the defect of the petition. If the averment of the answer may be looked into, the whole averment must be taken together. It is that both plaintiff and defendant are citizens of Louisiana." Brown v. Keene: 33 U.S. (Peters 8) 112, at 115 thru 116 (1834).

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Also, the case of *Sun Printing & Publishing Association v. Edwards* (194 U.S. 377, 1904).

"*Syllabus*:

The facts, which involved the sufficiency of averments and proof of diverse citizenship to maintain the jurisdiction of the United States Circuit Court, are stated in the opinion of the court.

Opinion:

We come to the contention that the citizenship of Edwards was not averred in the complaint or shown by the record, and hence jurisdiction did not appear.

In answering the question, whether the Circuit Court had jurisdiction of the controversy, we must put ourselves in the place of the Circuit Court of Appeals, and decide the question with reference to the transcript of record in that court.

Had the transcript shown nothing more as to the status of Edwards than the averment of the complaint that he was a 'resident of the State of Delaware,' as such an averment would not necessarily have imported that Edwards was a citizen of Delaware, a negative answer would have been impelled by prior decisions. *Mexican Central Ry. Co. v. Duthie,* 189 U.S. 76; *Horne v. George H. Hammond Co.*, 155 U.S. 393; *Denny v. Pironi*, 141 U.S. 121; *Robertson v. Cease*, 97 U.S. 646. The whole record, however, may be looked to, for the purpose of curing a defective averment of citizenship, where jurisdiction in a Federal court is asserted to depend upon diversity of citizenship, and if the requisite citizenship, is anywhere expressly averred in the record, or facts are therein stated which in legal intendment constitute such allegation, that is sufficient. *Horne v. George H. Hammond Co*., supra and cases cited.

As this is an action at law, we are bound to assume that the testimony of the plaintiff contained in the certificate of the Circuit Court of Appeals, and recited to

have been given on the trial, was preserved in a bill of exceptions, which formed part of the transcript of record filed in the Circuit Court of Appeals. Being a part of the record, and proper to be resorted to in settling a question of the character of that now under consideration, *Robertson v. Cease*, 97 U.S. 648, we come to ascertain what is established by the uncontradicted evidence referred to.

In the first place, it shows that Edwards, prior to his employment on the New York Sun and the New Haven Palladium, was legally domiciled in the State of Delaware. Next, it demonstrates that he had no intention to abandon such domicil, for he testified under oath as follows: 'One of the reasons I left the New Haven Palladium was, it was too far away from home. I lived in Delaware, and I had to go back and forth. My family are over in Delaware.' Now, it is elementary that, to effect a change of one's legal domicil, two things are indispensable: First, residence in a new domicil, and, second, the intention to remain there. The change cannot be made, except facto et animo. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. *Mitchell v. United States*, 21 Wall. 350.

As Delaware must, then, be held to have been the legal domicil of Edwards at the time he commenced this action, ***had it appeared*** **[Footnote 2]** ***that he was a citizen of the United States, it would have resulted, by operation of the Fourteenth Amendment, that Edwards was also a citizen of the State of Delaware***. *Anderson v. Watt*, 138 U.S. 694. Be this as it may, however, Delaware being the legal domicil of Edwards, it was impossible for him to have been a citizen of another State, District, or Territory, and he must then have been either a citizen of Delaware or a citizen or subject of a foreign State. In either of these contingencies, the Circuit Court would have had jurisdiction over the controversy. But, in the light of the testimony, we are satisfied that the averment in the complaint, that Edwards was a resident 'of' the State of Delaware, was intended to mean, and, reasonably construed, must be interpreted as averring, that the plaintiff was a citizen of the State of Delaware. *Jones v. Andrews*, 10 Wall. 327, 331; *Express Company v. Kountze*, 8 Wall. 342." Sun Printing & Publishing Association v. Edwards: 194 U.S. 377, at 381 thru 383 (1904).

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If one does not aver that he or she is a citizen of a State, then it will be presumed, that one is not a citizen of a State:

"***In the oral argument before this court, the inquiry arose, whether since the adoption of the Fourteenth Amendment to the Federal Constitution the mere allegation of residence in Illinois did not make such a prima facie case of***

citizenship in that State as, in the absence of proof, should be deemed sufficient to sustain the jurisdiction of the Circuit Court. That amendment declares that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State where they reside.' It was suggested that a resident of one of the States is prima facie either a citizen of the United States or an alien, — if a citizen of the United States, and also a resident of one of the States, he is, by the terms of the Fourteenth Amendment, also a citizen of the State wherein he resides, — and if an alien, he was entitled in that capacity to sue in the Federal court, without regard to residence in any particular State. It is not to be denied that there is some force in these suggestions, but they do not convince us that it is either necessary or wise to modify the rules heretofore established by a long line of decisions upon the subject of the jurisdiction of the Federal courts. Those who think that the Fourteenth Amendment requires some modification of those rules, claim, not that the plaintiff's residence in a particular State necessarily or conclusively proves him to be a citizen of that State, within the meaning of the Constitution, but only that a general allegation of residence, without indicating the character of such residence, whether temporary or permanent, made a prima facie case of right to sue in the Federal courts. ***As the jurisdiction of the Circuit Court is limited in the sense that it has none except that conferred by the Constitution and laws of the United States, the presumption now, as well as before the adoption of the Fourteenth Amendment, is, that a cause is without its jurisdiction unless the contrary affirmatively appears. In cases where jurisdiction depends upon the citizenship of the parties, such citizenship, or the facts which in legal intendment constitute it, should be distinctly and positively averred in the pleadings, or they should appear affirmatively, and with equal distinctness, in other parts of the record.*** And so where jurisdiction depends upon the alienage of one of the parties. In *Brown v. Keene* (8 Pet. 115), Mr. Chief Justice Marshall said: 'The decisions of this court require that the averment of jurisdiction shall be positive, that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.' Here the only fact averred, or appearing from the record, is that Cease was a resident of Illinois; and we are, in effect, asked, in support of the jurisdiction of the court below, to infer argumentatively, from the mere allegation of 'residence,' that, if not an alien, he had a fixed permanent domicile in that State, and was a native or naturalized citizen of the United States, and subject to the jurisdiction thereof. By such argumentative inferences, it is contended that we should ascertain the fact, vital to the jurisdiction of the court, of his citizenship in some State other than that in which the suit was brought. ***We perceive nothing in either the language or policy of the Fourteenth Amendment which requires or justifies us in holding that the bare averment of the residence of the parties is sufficient, prima facie, to show jurisdiction***. The judgment must, therefore, be reversed, upon the ground that it does not affirmatively appear from

the record that the defendant in error was entitled to sue in the Circuit Court." Robertson v. Cease: 97 U.S. 646, at 648 thru 650 (1878).

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An individual who is a citizen of a State and not a citizen of the United States, under Article IV, Section 2, Clause 1 of the Constitution **[Footnote 3]**, only has to aver that he or she is a citizen of a State of the Union:

"The bill filed in the Circuit Court by the ***plaintiff, McQuesten, alleged her to be 'a citizen of the United States and of the State of Massachusetts***, and residing at Turner Falls in said State,' ***while the defendants Steigleder and wife were alleged to be 'citizens of the State of Washington***, and residing at the city of Seattle in said State.' *Statement of the Case*, Steigleder v. McQuesten: 198 U.S. 141 (1905). {After the Fourteenth Amendment}

"***The averment in the bill that the parties were citizens of different States was sufficient to make a prima facie case of jurisdiction so far as it depended on citizenship***.' *Opinion*, Steigleder v. McQuesten: 198 U.S. 141, at 142 (1905).

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"The appellants brought suit in the United States District Court for the Southern District of New York for the purpose of recovering from the Trustee an interest in a trust estate which had been sold, transferred and assigned by Conrad Morris Braker, the beneficiary. ***The complainants were citizens and residents of Pennsylvania. Both defendants were citizens and residents of New York. Notwithstanding the diversity of citizenship***, the court dismissed the bill on the ground that, as the assignor Braker, a citizen of New York, could not in the United States District Court, have sued Fletcher, Trustee and citizen of the same State, neither could the Complainants, his assignees, sue therein, even though they were residents of the State of Pennsylvania.

The appeal from that decision involves a construction of §24 of the Judicial Code, which limits the jurisdiction of the United States District Court when suit is brought therein . . . 'to recover upon any promissory note or other chose in action in favor of any assignee. . . .' ." Brown v. Flectcher: 235 U.S. 589, at 594 thru 595 (1914).

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Diversity of citizenship is derived from the Constitution of the United States of

America; at Article III, Section 2, Clause 2 which provides that "[T]he judicial Power [of the United States] shall extend to Controversies between Citizens of different States, or [between] Citizens [of a State] thereof, and foreign citizens or subjects.

Congress, under authority of this provision, has prescribed by statute the conditions by which a federal court (circuit court) can exercise diversity of citizenship.

Diversity of citizenship was explored by the Supreme Court of the United States in the case of *Strawbridge v. Curtiss* (7 U.S. (Cranch 3) 267, 1806). In this case Chief Justice John Marshal established diversity of citizenship as being the legal requirement that the plaintiff to the cause (case) should be a citizen of a State different than that of the defendant.

In this case, plaintiffs were citizens of Massachusetts. One defendant was a citizen of Vermont. The other defendants were citizens of Massachusetts. Since a number of the defendants were citizens of the same State as the plaintiffs, then it was decided that the circuit court did not have jurisdiction; that is, diversity of citizenship was lacking.

An extension of this maxim is that all plaintiffs to a cause (case) must be citizens of a State different from that of the defendants. An example, two plaintiffs; one is a citizen of Michigan, the other a citizen of Delaware. Two defendants; one is a citizen of Connecticut, the other a citizen of Nebraska. If one defendant was either a citizen of Michigan or Delaware, then diversity of citizenship would not exist. In addition, a partnership or a limited liability company with one partner or member being a citizen of the same State as opposing party will deprive the federal court (circuit court) of jurisdiction for purposes of diversity of citizenship.

Also, an alien; that is, a foreign citizen or subject can not sue another alien; that is, a foreign citizen or subject. One of the parties must be a citizen of a State. In addition, to a case to which there are more then one plaintiff, or defendant, or both, a party which is an alien cannot appear on both sides of the suit, but only on one. Thus, two citizens of Florida, can sue two citizens of Georgia and an alien, for purposes of diversity of citizenship; while two citizens of Florida and an alien, cannot sue two citizens of Georgia and an alien, for purposes of diversity of citizenship. **[Footnote 4]**

Footnotes:

1. A federal question case is a civil case which involves a claim under the Constitution of the United States of America, or the laws of the United States, or treaties to which the United States is a party, or a combination thereof. Depending on the year of the suit, there may also be a dollar amount which must be met; that is, an amount in controversy.

2. That is, from the averment of citizenship or other parts of the record.

3. See my work "Two Distinct State Citizens For Purposes Of Diversity Of Citizenship" where I show that there are two state citizens under the Constitution of the United States of America. The first is at Section 1, Clause 1 of the Fourteenth Amendment. The second is at Article IV, Section 2, Clause 1 of the Constitution. Also shown is that a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment is a citizen of the United States, whereas a citizen of a State, under Article IV, Section 2, Clause 1 is a citizen of the several States. And, that privileges and immunities of a citizen of the United States are not the same as privileges and immunities of a citizen of the several States. *Slaughterhouse Cases* (83 U.S. 36, at 74, 1873).

4. For more detailed information on diversity of citizenship, refer to the following works and memorandum decision:

In The United States District Court For The Eastern District of Pennsylvania

McCracken v. Ford Motor Company et. al.

Civil Action, No. 07-CV-2018

Memorandum Decision, Page 3

". . . [T]he jurisdiction of the circuit court fails, unless the necessary citizenship affirmatively appears in the pleadings or elsewhere in the record.' . . . The burden is on the plaintiff to affirmatively allege the essential elements of diversity jurisdiction. See *McNutt v. General Motors Acceptance Corp*., 298 U.S. 178, 188-89.

McCracken alleges that {the} Ford is incorporated in Delaware and headquartered in Michigan. Thus, Ford is considered a citizen of both Delaware and Michigan. The plaintiff alleges that he is a citizen of the United States, but does not make any allegation as to his state citizenship. He alleges that he has resided principally in Pennsylvania, New York and Delaware over the past ten years. These allegations do not establish McCracken's state citizenship.

Since the plaintiff has failed to allege the citizenship of one of the parties to this action, he has not affirmatively alleged the essential elements of diversity jurisdiction. Accordingly, the court is deprived of jurisdiction and this action is dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction"

http://www.paed.uscourts.gov/documents/opinions/09d0519p.pdf

"A Primer on Removal: Don't Leave State Court Without It":

http://www.balch.com/files/Publication/992723a2-ea1b-4cb8-9cb8-01287d8ca796/Presentation/PublicationAttachment/416c40d8-6d9d-4ce0-a4d8-0a4830a78300/Removal%20Article.pdf

"Removal And Remand: A Guide To Navigating Between The State And Federal Courts":

http://www.federalappeals.com/docs/REMARTFI.pdf

"Federal Jurisdiction Based On Removal: A 50-State Survey":

A Report of the Pharmaceutical Subcommittee of the Products Liability Committee

http://www.dgslaw.com/attorneys/ReferenceDesk/Pilkington_FedJurisdiction.pdf

"The Hidden Bias In Diversity Jurisdiction":

Washington University Law Review, Volume 81, Number 1, Page 119 (2004)

http://lawreview.wustl.edu/inprint/81-1/p119%20Bassett.pdf

"Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases":

Indiana Law Journal, Volume 74, Issue 1, Page 5 (1998)

http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2213&context=ilj&sei-redir=1&referer=http%3A%2F%2F

"III. Plaintiff's Paradise Lost: Diversity of Citizenship and Amount in Controversy under the Class Action Fairness Act of 2005":

Loyola of Los Angeles Law Review, Volume 39, Issue 3, Page 1025 (2006)

http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2535&context=llr

Federal Courts Jurisdiction Clarification Act Hearing Before The Subcommittee On Courts, The Internet, And Intellectual Property Of The Committee On The Judiciary, House Of Representatives, One Hundred Ninth Congress, First Session, November 15, 2005.

http://commdocs.house.gov/committees/judiciary/hju24607.000/hju24607_0f.htm

"Seeking CAFA Clarity: A Summary of Recent Case Law Addressing Challenges to Jurisdiction Under the Class Action Fairness Act":

http://www.dinsmore.com/seeking_cafa_clarity/

"Overhauling the Federal Jurisdiction Statutes":

The Federal Courts Jurisdiction and Venue Clarification Act of 2011

http://www.pepperlaw.com/pdfs/ComLitAlert_010512.pdf

"Report of the Proceedings of the Judicial Conference of the United States":

See the report of the Committee on Federal-State Jurisdiction, Jurisdictional Improvements

http://www.uscourts.gov/FederalCourts/JudicialConference/Proceedings.aspx