Diversity Jur

In the
United States Court of Appeals
For the Seventh Circuit

No. 02-3975

BELLEVILLE CATERING CO., *et al.*,

Plaintiffs-Appellants,

v.

CHAMPAIGN MARKET PLACE, L.L.C.,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 00-2259—David G. Bernthal, *Magistrate Judge.*

ARGUED OCTOBER 22, 2003—DECIDED DECEMBER 1, 2003

Before FLAUM, *Chief Judge*, and EASTERBROOK and WILLIAMS, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* Once again litigants' insouciance toward the requirements of federal jurisdiction has caused a waste of time and money. See, e.g., *Hart v. Terminix International*, 336 F.3d 541 (7th Cir. 2003); *Meyerson v. Showboat Marina Casino Partnership*, 312 F.3d 318 (7th Cir. 2002); *Meyerson v. Harrah's East Chicago Casino*, 299 F.3d 616 (7th Cir. 2002); *Indiana Gas Co. v. Home Insurance Co.*, 141 F.3d 314 (7th Cir. 1998); *Guaranty National Title Co. v. J.E.G. Associates*, 101 F.3d 57 (7th Cir. 1996); *Kanzelberger v. Kanzelberger*, 782 F.2d 774 (7th Cir. 1986).

Invoking the diversity jurisdiction, see 28 U.S.C. §1332, the complaint alleged that the corporate plaintiff is incorporated in Missouri and has its principal place of business there, and that the five individual plaintiffs (guarantors of the corporate plaintiff's obligations) are citizens of Missouri. It also alleged that the defendant is a "Delaware Limited Liability Company, with its principle [sic] place of business in the State of Illinois." Defendant agreed with these allegations and filed a counterclaim. The parties agreed that a magistrate judge could preside in lieu of a district judge, see 28 U.S.C. §636(c), and the magistrate judge accepted these jurisdictional allegations at face value. A jury trial was held, ending in a verdict of $220,000 in defendant's favor on the counterclaim. Plaintiffs appealed; the jurisdictional statement of their appellate brief tracks the allegations of the complaint. Defendant's brief asserts that plaintiffs' jurisdictional summary is "complete and correct."

It is, however, transparently incomplete and incorrect. Counsel and the magistrate judge assumed that a limited liability company is treated like a corporation and thus is a citizen of its state of organization and its principal place of business. That is not right. Unincorporated enterprises are analogized to partnerships, which take the citizenship of every general and limited partner. See *Carden v. Arkoma Associates*, 494 U.S. 185 (1990). In common with other courts of appeals, we have held that limited liability companies are citizens of every state of which any member is a citizen. See *Cosgrove v. Bartolotta*, 150 F.3d 729 (7th Cir. 1998). So who are Champaign Market Place LLC's members, and of what states are they citizens? Our effort to explore jurisdiction before oral argument led to an unexpected discovery: Belleville Catering, the corporate plaintiff, appeared to be incorporated in Illinois rather than Missouri!

At oral argument we directed the parties to file supplemental memoranda addressing jurisdictional details. Plaintiffs' response concedes that Belleville Catering is (and always has been) incorporated in Illinois. Counsel tells us that, because the lease between Belleville Catering and Champaign Market Place refers to Belleville Catering as "a Missouri corporation," he assumed that it must be one. That confesses a violation of Fed. R. Civ. P. 11. People do not draft leases with the requirements of §1332 in mind—perhaps the lease meant only that Belleville Catering did business in Missouri—and counsel must secure jurisdictional details from original sources before making formal allegations. That would have been easy to do; the client's files doubtless contain the certificate of incorporation. Or counsel could have done what the court did: use the Internet. Both Illinois and Missouri make databases of incorporations readily available. Counsel for the defendant should have done the same, instead of agreeing with the complaint's unfounded allegation.

Both sides also must share the blame for assuming that a limited liability company is treated like a corporation. In the memorandum filed after oral argument, counsel for Champaign Market Place relate that several of its members are citizens of Illinois. Citizens of Illinois thus are on both sides of the suit, which therefore cannot proceed under §1332. Moreover, for all we can tell, other members are citizens of Missouri. Champaign Market Place says that one of its members is another limited liability company that "is asserting confidentiality for the members of the L.L.C." It is not possible to litigate under the diversity jurisdiction with details kept confidential from the judiciary. So federal jurisdiction has not been established. The complaint should not have been filed in federal court (for Belleville Catering had to know its own state of incorporation), the answer should have pointed out a problem (for Champaign Market

Place's lawyers had to ascertain the legal status of limited liability companies), and the magistrate judge should have checked all of this independently (for inquiring whether the court has jurisdiction is a federal judge's first duty in every case).

Failure to perform these tasks has the potential, realized here, to waste time (including that of the put-upon jurors) and run up legal fees. Usually parties accept the inevitable and proceed to state court once the problem becomes apparent. Perhaps the most extraordinary aspect of this proceeding, however, is the following passage in defendant's post-argument memorandum:

> Defendant-Appellee, Champaign Market Place L.L.C., prays that this Court in the exercise of its Appellate jurisdiction decide the case on the merits and affirm the judgment entered on the jury's verdict. Surely in the past this Court has decided a case on the merits where an examination of the issue would have shown a lack of subject matter jurisdiction in the District Court. It would be unfortunate in the extreme for Champaign Market Place L.L.C. to lose a judgment where Belleville Catering Company, Inc. misrepresented (albeit unintentionally) its State of incorporation in its Complaint. . . . [T]here was no reason for Champaign Market Place L.L.C. to question diversity of citizenship, since it is not, and never has been, a citizen of Missouri.

This passage—and there is more in the same vein—leaves us agog. Just where do appellate courts acquire authority to decide on the merits a case over which there is no federal jurisdiction? The proposition that the Seventh Circuit has done so in the past—a proposition unsupported by any citation—accuses the court of dereliction combined with usurpation. "A court lacks discretion to consider the merits

of a case over which it is without jurisdiction". *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981). And while counsel feel free to accuse the judges of *ultra vires* conduct, and to invite some more of it, they exculpate themselves. Lawyers for defendants, as well as plaintiffs, must investigate rather than assume jurisdiction; to do this, they first must learn the legal rules that determine whose citizenship matters (as defendant's lawyers failed to do). And no entity that claims confidentiality for its members' identities and citizenships is well situated to assert that it could believe, in good faith, that complete diversity has been established.

One more subject before we conclude. The costs of a doomed foray into federal court should fall on the lawyers who failed to do their homework, not on the hapless clients. Although we lack jurisdiction to resolve the merits, we have ample authority to govern the practice of counsel in the litigation. See, e.g., *Willy v. Coastal Corp.*, 503 U.S. 131 (1992); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393-98 (1990); *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073 (7th Cir. 1987). The best way for counsel to make the litigants whole is to perform, without additional fees, any further services that are necessary to bring this suit to a conclusion in state court, or via settlement. That way the clients will pay just once for the litigation. This is intended not as a sanction, but simply to ensure that clients need not pay for lawyers' time that has been wasted for reasons beyond the clients' control.

The judgment of the district court is vacated, and the proceeding is remanded with instructions to dismiss the complaint for want of subject-matter jurisdiction.

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 11a0034p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BETTY FREELAND, Administratrix of the Estate of John L. Freeland, Jr., Deceased and the Estate of Tina M. Freeland, Deceased; JOHN L. FREELAND, SR., Guardian of the Persons and Estate of J.M.F., a Minor, K.D.F., a Minor, and S.N.F., a Minor,
Plaintiffs-Appellants,

v.

LIBERTY MUTUAL FIRE INSURANCE CO.,
Defendant-Appellee.

No. 10-3038

Appeal from the United States District Court
for the Northern District of Ohio at Youngstown.
No. 09-00341—Peter C. Economus, District Judge.

Argued: January 20, 2011

Decided and Filed: February 4, 2011

Before: MARTIN and STRANCH, Circuit Judges; THAPAR, District Judge.*

COUNSEL

ARGUED: Michael D. Rossi, GUARNIERI & SECREST, P.L.L., Warren, Ohio, for Appellants. Jeffrey C. Gerish, PLUNKETT COONEY, Bloomfield Hills, Michigan, for Appellee. **ON BRIEF:** Michael D. Rossi, GUARNIERI & SECREST, P.L.L., Warren, Ohio, for Appellants. Jeffrey C. Gerish, PLUNKETT COONEY, Bloomfield Hills, Michigan, for Appellee.

*The Honorable Amul R. Thapar, United States District Judge for the Eastern District of Kentucky, sitting by designation.

OPINION

THAPAR, District Judge. This insurance coverage case arises out of a tragic car accident. Despite the resources that have been invested in litigating this action, we must dismiss it to start anew in state court because the amount in controversy is one penny short of our jurisdictional minimum.

I.

The plaintiffs-appellants, John and Betty Freeland, loaned their Pontiac Trans Sport minivan to their son, John Freeland, Jr., and his family. On March 7, 2007, Freeland, Jr. was driving the minivan with his wife and three children in the car when he ran a red light and struck a police cruiser in the middle of an intersection. Freeland and his wife were killed in the accident. Their three children survived, but with serious injuries.

The Freelands insured their minivan with the defendant-appellee, Liberty Mutual Fire Insurance Co. The Freelands' policy provided coverage for bodily injuries up to a "single limit" of $100,000 as well as coverage for accidents caused by uninsured/underinsured motorists ("UM/UIM coverage") up to a "split limit" of $12,500 per person and $25,000 per accident. Because the Freelands' deceased son did not have car insurance of his own, he was an uninsured motorist. Therefore, Liberty Mutual offered the Freelands the $25,000 per accident limit of their UM/UIM coverage. Dissatisfied with the offer, the Freelands filed a lawsuit against Liberty Mutual in Ohio state court. The complaint alleged that their selection of UM/UIM coverage in 1999 was invalid under the Ohio Supreme Court's decision in *Linko v. Indemnity Insurance Co. of North America*, 739 N.E.2d 338, 342 (Ohio 2000), because the coverage selection form they signed did not contain certain required disclosures. Because of this invalid selection, the Freelands claimed that they had acquired UM/UIM coverage in an amount equal to their policy's bodily injury coverage by operation of law. The Freelands

therefore sought a declaratory judgment establishing that their insurance policy provided $100,000 in UM/UIM coverage per accident, instead of the $25,000 per accident stated on the policy's face.

Liberty Mutual removed the case to the United States District Court for the Northern District of Ohio. In the notice of removal, Liberty Mutual asserted that the parties were completely diverse and that the amount in controversy was $100,000—the full amount of UM/UIM coverage to which the Freelands argued they were entitled. Neither party challenged the district court's jurisdiction. On January 5, 2010, the district court granted Liberty Mutual's motion for summary judgment, and the Freelands appealed to this Court.

II.

The penny is easily the most neglected piece of U.S. currency. Pennies tend to sit at the bottom of change jars or vanish into the cracks between couch cushions. Vending machines and parking meters will not accept them. Many people refuse to bend down to pick up a penny off the ground, deeming the reward not worth the effort. And a member of Congress even introduced legislation that would effectively eliminate the penny by requiring merchants to round their prices to the nearest nickel. *See* Currency Overhaul for an Industrious Nation (COIN) Act, H.R. 5818, 109th Cong. § 3(a) (2006). In this case, however, the penny gets a rare moment in the spotlight. The amount in controversy in this declaratory judgment action is exactly one penny short of the jurisdictional minimum of the federal courts.

Although the district court did not address it and the parties did not raise the issue in their briefs, this Court has "an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Liberty Mutual removed this case to federal court under 28 U.S.C. § 1441(a), which allows removal of civil actions "of which the district courts of the United States have original jurisdiction." Because this case presents no federal question, Liberty Mutual invoked the district court's diversity jurisdiction. Article III of the Constitution authorizes federal jurisdiction in all controversies where

the parties are "citizens of different states." U.S. Const. art. III, § 2. But Congress has always limited this grant of jurisdiction by also requiring that cases satisfy a minimum amount-in-controversy requirement. *See Snyder v. Harris*, 394 U.S. 332, 334 (1969). When Congress first established the lower federal courts in the Judiciary Act of 1789, the required amount in controversy was $500. *Id.* That figure has increased over the years, and today "the matter in controversy [must] exceed[] the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. § 1332.

Yet in this case the amount in controversy is $75,000 exactly—one penny short of the jurisdictional bar that Congress has set. The Freelands seek a declaratory judgment that their insurance policy provides UM/UIM coverage up to $100,000 per accident, instead of the $25,000 per accident maximum that appears on the policy's face. "In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977). Applying this principle, this Court has said that, "[w]here a party seeks a declaratory judgment, 'the amount in controversy is not necessarily the money judgment sought or recovered, but rather the value of the consequences which may result from the litigation.'" *Lodal, Inc. v. Home Ins. Co. of Ill.*, No. 95-2187, 1998 WL 393766, at *2 (6th Cir. June 12, 1998) (quoting *Beacon Constr. Co. v. Matco Elec. Co.*, 521 F.2d 392, 399 (2d Cir. 1975)). If the Freelands prevail in this case, they will receive a declaration that their policy provides up to $100,000 in UM/UIM coverage. If they do not prevail, their policy will remain as-is, with only $25,000 in UM/UIM coverage. The "value of the consequences which may result from the litigation," *id.*—that is, the monetary consequences that would result from a victory for the Freelands—is the difference between $100,000 and $25,000. That amount is $75,000 exactly.

This conclusion flows from the text of the jurisdictional statute itself. In order for the district court to have original jurisdiction, "the matter *in controversy*" must "exceed[] the sum or value of $75,000." 28 U.S.C. § 1332 (emphasis added). The words "in controversy" have to mean something. Congress could have written § 1332 to

require only that "the matter exceed the sum or value of $75,000," in which case jurisdiction might be appropriate here. But there is simply no controversy over the first $25,000 of coverage. If the Freelands lose, they will keep that amount of coverage. Indeed, as the Freelands acknowledged in their complaint in state court, Liberty Mutual has already offered the Freelands this amount. The dispute—the controversy—is only over the next $75,000.

Liberty Mutual's offer of $25,000 is not the same, of course, as a settlement offer. A party's offer to settle a case for a specified amount does not reduce the amount in controversy by that amount. If plaintiff sues defendant for $100,000, defendant cannot defeat federal jurisdiction simply by offering to settle the case for $40,000. Here, though, Liberty Mutual's offer is simply an acknowledgment that there is no dispute over the first $25,000 of coverage—the maximum under the Freelands' policy as it is currently written. That amount is the baseline level of coverage that the Freelands will keep even if they lose this lawsuit.

Although no other circuits appear to have addressed the precise jurisdictional issue that this case presents, the Third Circuit's decision in *State Farm Mutual Automobile Insurance Co. v. Powell*, 87 F.3d 93, 97 (3d Cir. 1996), is quite similar. There, the insured had two policies, each providing $50,000 in coverage. The question was whether he could recover under both policies, or whether he was limited to recovering under only one. The insurance company sought a declaratory judgment that the insured could only recover $50,000 under one of his policies, while the insured argued that he could recover a total of $100,000 under both of them. *Id.* at 95-96. Because, "from the outset of [the] litigation [the insurance company] conceded that it owed [the insured] $50,000," the Third Circuit held that the amount in controversy was not $100,000, but rather only $50,000—one penny shy of the jurisdictional threshold at the time. *Id.* at 97. Similarly in this case, Liberty Mutual has always conceded that the Freelands have $25,000 in UM/UIM coverage. That is what their policy provides on its face. The controversy is only over whether their policy provides $75,000 in additional coverage. *See also State Farm Fire & Cas. Co. v. Sweat*, 547 F. Supp. 233, 238 & n.13

(N.D. Ga. 1982) (in declaratory judgment action where insured claimed policy provided $50,000 in coverage and insurance company claimed it provided $5,000 in coverage, amount in controversy was $45,000 because insurance company's "potential liability as a result of this case is in that amount").

The Freelands' demand for interest and costs in their state court complaint does not change this conclusion. Section 1332 demands that the matter in controversy exceed $75,000 "exclusive of interest and costs." Therefore, the amount in controversy remains one penny short. The absence of that single penny deprived the district court of subject-matter jurisdiction over the Freelands' lawsuit. *See, e.g.*, *Powell*, 87 F.3d at 98-99; *Larkin v. Brown*, 41 F.3d 387, 389 (8th Cir. 1994).

In a supplemental brief filed at the Court's request, Liberty Mutual advances two arguments for finding that the amount in controversy exceeds $75,000. Both lack merit. First, Liberty Mutual argues that the amount in controversy is actually $87,500 because the declaratory judgment the Freelands seek would increase the amount that a single person could recover under their UM/UIM coverage from $12,500 to $100,000. That may be true, but it is not what matters in *this* case. This case involves the $25,000 per accident limit of the Freelands' policy, not the $12,500 per person limit. The Freelands' policy covered four people who were either injured or killed in the accident, and their total injuries easily exceeded $25,000. Indeed, Liberty Mutual has already offered the Freelands the full $25,000 per accident limit. So, the difference between what the Freelands would receive for this accident if they win and what they would receive if they lose is still only $75,000. The corresponding increase in the per person coverage limit is of no consequence in this action.

Liberty Mutual's second argument is that, even if it only faces $75,000 in additional liability in this case, the possibility of future claims under the Freelands' reformed policy nudges the amount in controversy over the limit. This argument also fails. First, the particular policy at issue in this case expired in November 2007, and it is unclear from the record whether the Freelands still have a policy with Liberty Mutual. But even if they do, the unsubstantiated possibility of future claims under an insurance

policy cannot be enough to satisfy the amount in controversy requirement. As Liberty Mutual's counsel conceded at oral argument, this theory has no limit. Under this line of reasoning, a lawsuit involving an insurance policy that provides $1,000 in coverage per accident would have a sufficient amount in controversy because the insured could have 75 more accidents in the future. The amount in controversy requirement would be satisfied in virtually every insurance case. For this reason, courts typically do not include speculative future claims under an insurance policy when determining the amount in controversy. Instead, courts limit their inquiry to the coverage that would apply to the incident in the dispute before them. *See, e.g.*, *State Farm Mut. Auto. Ins. Co. v. Narvaez*, 149 F.3d 1269, 1270-71 (10th Cir. 1998) (considering only potential liability from underlying incident); *Powell*, 87 F.3d at 95-97 (same).

Resisting this conclusion, Liberty Mutual asserted at oral argument that this Court's unpublished decision in *Lodal* blessed consideration of potential future claims under an insurance policy in assessing the amount in controversy. *Lodal, Inc. v. Home Ins. Co. of Ill.*, No. 95-2187, 1998 WL 393766 (6th Cir. June 12, 1998). This argument misreads *Lodal*. That case involved a dispute over an insurance company's duty to defend its insured and to pay up to $200,000 in litigation costs in an ongoing lawsuit. *Id.* at *1. This Court held that the amount in controversy requirement was satisfied because of "the potential value of future claims under the policy." *Id.* at *3. That statement made perfect sense in *Lodal* because the lawsuit was still ongoing and the insured faced future legal bills from that same action. *Id.* at *2-3. In other words, *Lodal* involved the natural extension of an ongoing liability event. Here, in contrast, Liberty Mutual asks us to rely on the entirely speculative possibility that the Freelands might have another accident in the future involving an uninsured or an underinsured motorist. *Lodal* provides no justification for such an act of judicial star-gazing.

Thus, the amount in controversy in this case is $75,000—exactly one penny short of the jurisdictional minimum of the federal courts. 28 U.S.C. § 1332. The Court recognizes that vacating the district court's judgment and remanding this case is painfully inefficient. This is especially so in light of the substantial resources that have

been spent litigating the merits of this case and the infinitesimal amount by which the amount in controversy falls short. But the Court simply has no choice in the matter. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute . . . which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal citations omitted). The district court lacked the authority to grant Liberty Mutual's motion for summary judgment. The only proper course is to remand this case back to state court for lack of federal jurisdiction.

III.

For these reasons, we **VACATE** the decision of the district court granting summary judgment in favor of Liberty Mutual and **REMAND** this case to the district court with instructions to remand it back to state court for lack of subject-matter jurisdiction. Because we lack jurisdiction, we express no opinion on the merits of the Freelands' claim.