

A company incorporated and with its principal place of business in State A sued a partnership located in State B in a State A federal court to recover \$30,000 for a breach of contract claim and \$60,000 for a misrepresentation claim.

After the partnership filed an answer denying liability, the partnership's attorney learned that one of the partners had permanently moved to State A before the company filed its complaint. The attorney moved to dismiss the suit for lack of subject-matter jurisdiction.

How should the court rule on the motion?

- A. Deny the motion, because the company and the partnership are diverse and the amount in controversy is satisfied.
- B. Deny the motion, because the partnership waived its subject-matter jurisdiction defense by failing to include it in its answer.
- C. Grant the motion, because neither of the company's claims independently exceeds \$75,000.
- D. Grant the motion, because the company and the partnership are not diverse.

Explanation:

Citizenship for diversity jurisdiction

Person	Citizen of state where domiciled—ie, physically present with intent to remain indefinitely
Corporation	Citizen of every state where it (1) has been incorporated and/or (2) has its principal place of business
Unincorporated association	Citizen of every state where its members are domiciled

A federal court can only hear a suit over which it has **subject-matter jurisdiction**—ie, authority to hear a particular type of case or controversy. The burden is on the party seeking to invoke the court's subject-matter jurisdiction (ie, the claimant) to prove by a preponderance of the evidence that the court has either:

- federal-question jurisdiction – the claim arises under the U.S. Constitution, a treaty, or federal law (not seen here) *or*
- **diversity jurisdiction** – the amount in controversy exceeds \$75,000 and the **opposing parties are citizens of different states** (ie, are diverse) **at the time the complaint is filed**.

A corporation (eg, the company) is a citizen of every state where it is incorporated and/or has its principal place of business (here, State A). In contrast, an **unincorporated association** (eg, the partnership) is a **citizen** of every state where its **members are domiciled**—ie, where they reside and intend to remain indefinitely. Since a partner moved to State A *before* the complaint was filed, the partnership is a State A citizen*—just like the corporation. Therefore, the parties are not diverse and the partnership's motion to dismiss should be granted **(Choice A)**.

*The partnership is also a citizen of any other state where other partners are domiciled.

(Choice B) Most defenses are **waived** if they are not asserted in a defendant's answer. But a defense based on lack of subject-matter jurisdiction is *never* waived and can be asserted by a party or raised by the court at any time.

(Choice C) Although neither of the company's claims independently exceeds \$75,000, the company can aggregate (ie, combine) them to \$90,000 to satisfy the **amount-in-controversy** requirement for diversity jurisdiction.

Educational objective:

For purposes of diversity jurisdiction, a corporation is a citizen of every state where it is incorporated and/or has its principal place of business. An unincorporated association is a citizen of every state where its members are domiciled—ie, where the members reside and intend to remain indefinitely.

References

- 28 U.S.C. § 1332 (diversity jurisdiction).
- *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195–96 (1990) (holding that an unincorporated association, such as a partnership, is a citizen of every state where its members are domiciled).

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