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### **First Circuit Vacates Substantial Judgment Based on Failure to Establish Diversity Jurisdiction**

The United States First Circuit Court of Appeals recently issued a decision that exemplifies the importance of clearly establishing the basis for diversity jurisdiction early in a case.

In *BRT Management LLC v. Malden Storage LLC*, after six years of litigation and a nine-day bench trial resulting in a substantial judgment against the plaintiff/third-party defendant, the First Circuit vacated the judgment because “the parties have been unable to establish that no defendant shares state citizenship with any plaintiff.” The First Circuit remanded to the District Court so that the defendants would have “one last chance” to demonstrate complete diversity – if they failed to meet that showing, the case would be dismissed.

The diversity analysis was complex in *BRT* because the defendant entities were limited liability companies whose members were, in turn, other unincorporated entities made up of yet more unincorporated entities. Despite having numerous opportunities in the course of the litigation to establish the basis for diversity, the First Circuit found that the parties had not adequately drilled down and explained the citizenship of all of the members of the various entities, including trusts. The Court explained that the process of determining citizenship of an unincorporated entity is “iterative . . . a party must trace the citizenship of any member that is an unincorporated association through however many layers of members or partners there may be.”

The First Circuit also rejected the parties’ efforts to “stipulate” regarding the existence of diversity jurisdiction, saying “[p]arties cannot establish federal subject matter jurisdiction merely by agreeing that the basis for jurisdiction is satisfied.”

## About OCM

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