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Diversity Jurisdiction and Limited Partnerships

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INTRODUCTION

When an unincorporated association sues or is sued in federal court under diversity jurisdiction, the association's citizenship is deemed to be the citizenship of its members. In actions involving one type of unincorporated association, the limited partnership, two circuit courts have reached opposite conclusions as to whether identity of citizenship between a limited partner and an adverse party defeats such federal jurisdiction. In 1966, the Second Circuit held in *Colonial Realty Corp. v. Bache & Co.*[1] that when state statutes prohibit limited partners from being parties to actions by or against the partnership, the citizenship of the limited partners will not defeat diversity jurisdiction. The Third Circuit's recent decision in *Carlsberg Resources Corp. v. Cambria Savings and Loan Association*[2] disagreed sharply with that result. The *Carlsberg Resources* majority called such a position an unwarranted extension of diversity jurisdiction to "hitherto uncovered broad categories of litigants."[3]

The analysis of both opinions was inadequate, especially because neither recognized that the whole question results from a unique configuration of the rules for determining citizenship and two facets of the rules of capacity to sue—the capacity of the partners to sue or be sued as individuals and the capacity of the partnership to sue or be sued as an entity. This Comment will examine this alignment of citizenship and capacity rules as they relate to limited partnerships and will identify the policy considerations relevant to a resolution of the conflict between the Second and Third Circuits on the question of whether the citizenship of the limited partners must be considered in determining the citizenship of the partnership.

I. BACKGROUND

A. *Citizenship*

Except in cases involving foreign states or their citizens or subjects, the diversity jurisdiction of the federal courts is restricted by the Constitution and by statute to actions between

1. 358 F.2d 178 (2d Cir.), *cert. denied*, 385 U.S. 817 (1966).

2. 554 F.2d 1254 (3d Cir. 1977).

3. *Id.* at 1259. This language was borrowed from United Steelworkers v. R.H. Bouligny, Inc., 382 U.S. 145, 151 (1965).

citizens of different states.[4] In defining "citizen," the Supreme Court held in an early decision, *Bank of the United States v. Deveaux*,[5] that an artificial person could not be a citizen and that the citizenship of such a person was deemed to be the citizenship of all its members. Although the Supreme Court later reversed itself and for a time considered corporations to be citizens,[6] the *Deveaux* holding was revived in theory (though not in practice) in *Marshall v. Baltimore and Ohio Railroad.*[7] *Marshall* reaffirmed the rule that an artificial entity cannot be a citizen, but created the fiction, and raised it to the level of a conclusive presumption, that all the corporate stockholders were residents of the state that created the corporation. In 1958, the diversity jurisdiction statute was amended to give corporations citizenship.[8]

Unincorporated associations, on the other hand, were denied citizenship as entities because the *Marshall* fiction did not apply to them. Beginning in 1889, the Supreme Court was urged in a series of cases to extend to unincorporated associations the benefits of the jurisdictional standards applied to corporations. The first case was *Chapman v. Barney*,[9] in which a New York joint stock company sought to be treated as a corporation. In 1900, a Pennsylvania limited partnership argued in *Great Southern Fire Proof Hotel Co. v. Jones*[10] that it should have citizenship. Finally, citizenship status was urged for a university board of trustees in *Thomas v. Board of Trustees.*[11] In every instance, the Court held that a noncorporate body was incapable of having a citizenship

4. U.S. CONST. art. III, § 2, cl. 1 ("The judicial Power shall extend to all Cases, in Law and Equity . . . between Citizens of different states."); 28 U.S.C. § 1332 (1970), *as amended by* Act of Oct. 21, 1976, Pub. L. No. 96-583, § 3, 90 Stat. 2891.

5. 9 U.S. (5 Cranch) 37 (1809).

6. Louisville, C. & C.R.R. v. Letson, 43 U.S. (2 How.) 497 (1844). For a thorough and critical examination of the corporate citizenship question, see McGovney, *A Supreme Court Fiction—Corporations in the Diverse Citizenship Jurisdiction of the Federal Courts* (pts. 1-3), 56 HARV. L. REV. 853, 1090, 1225 (1943). McGovney concluded that the extension of diversity jurisdiction to corporations was unconstitutional and should be immediately changed by either the Court or the Congress.

7. 57 U.S. (16 How.) 314, 325-29 (1854).

8. Act of July 25, 1958, Pub. L. No. 85-554, § 2, 72 Stat. 415 (codified at 28 U.S.C. § 1332(c) (1970)). The statute specifies that "a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

9. 129 U.S. 677 (1889).

10. 177 U.S. 449 (1900). Although the partnership in that case was denominated a limited partnership, there was apparently no difference in status among the partners. In that significant aspect it was different from the modern limited partnership. Carlsberg Resources Corp. v. Cambria Sav. & Loan Ass'n, 554 F.2d 1254, 1264 (3d Cir. 1977).

11. 195 U.S. 207 (1904).

of its own, thus refusing to enlarge the *Marshall* fiction to include unincorporated associations.

The result, now the general rule as to noncorporate entities, is that an unincorporated association has an aggregate citizenship (that of its individual members) rather than citizenship as an entity.[12] The effect of this rule is to greatly reduce the availability of federal diversity jurisdiction to partnerships, labor unions, and other noncorporate bodies. Despite abundant criticism of the distinction between corporate and noncorporate entities[13] and an apparent deviation from the general rule in *Puerto Rico v. Russell & Co.*,[14] the Supreme Court in 1965 upheld the validity of the rule in *United Steelworkers v. R.H. Bouligny, Inc.*[15]

B. Capacity to Sue

As it pertains to unincorporated associations, the question of capacity to sue or be sued has two facets: (1) the capacity of the entity to sue in its common name, and (2) the capacity of the individual members to be parties to actions by or against the association, whether brought in the common name or in the name of various members. Capacity to sue or be sued in federal court is governed by Federal Rule of Civil Procedure 17(b).[16] This rule provides that in actions by or against an individual not acting in a representative capacity, the individual's capacity is governed by the law of his domicile; in actions brought by or against unincorporated associations in which jurisdicition is based on diversity of citizenship, however, the court determines the associa-

12. *E.g.*, United Steelworkers v. R.H. Bouligny, Inc., 382 U.S. 145 (1965); Jett v. Phillips & Assocs., 439 F.2d 987, 990 (10th Cir. 1971).

13. *See, e.g.*, Mason v. American Express Co., 334 F.2d 392, 398-99 (2d Cir. 1964) (joint stock company deemed to have sufficient legal personality to be treated as having citizenship for diversity purposes; court rejected *Chapman's* "mechanical rule of label denomination"); Van Sant v. American Express Co., 169 F.2d 355, 371-72 & n.7 (3d Cir. 1948) (court allowed joint stock company to be sued under diversity jurisdiction despite having a member in the same state in which plaintiff was domiciled; court stated that the *Chapman* rule "is itself beginning to show signs of being outmoded"); 3A MOORE'S FEDERAL PRACTICE ¶ 17.25, at 17-259 to 265, 17-362 to 363 (2d ed. 1977); Comment, *Unions as Juridical Persons*, 66 YALE L.J. 712, 742-44 (1957). *But see* Brocki v. American Express Co., 279 F.2d 785 (6th Cir.) (accepting and applying the general rule), *cert. denied*, 364 U.S. 871 (1960).

14. 288 U.S. 476 (1933). In that case an unincorporated *sociedad en comandita* was found to have capacity for citizenship because it had a complete legal personality in its civil law environment.

15. 382 U.S. 145 (1965). *Russell* was distinguished in *Bouligny* because of the problem "of fitting an exotic creation of the civil law . . . into a federal scheme which knew it not." *Id.* at 151.

16. FED. R. CIV. P. 17(b).

tion's capacity to sue or be sued by reference to the law of the state in which the federal court is sitting.[17]

Even though state law may give an unincorporated association the capacity to sue or be sued as an entity, this does not give the association citizenship in the federal jurisdictional sense. Capacity to sue as an entity is a quality totally distinct from the possession of citizenship as an entity.[18] Although corporations were deemed to have citizenship largely because they had the capacity to sue as entities,[19] the opposite conclusion has been reached with respect to noncorporate associations: "The capacity of the partners to sue and be sued in their partnership name does not confer a citizenship on the partnership."[20]

C. Limited Partnerships

Limited partnerships are "creatures of statute."[21] According to the Uniform Limited Partnership Act, which has been adopted in 49 states, the District of Columbia, and the Virgin Islands,[22] a limited partnership is composed of at least one general partner, who manages the firm and incurs the same liability as would a partner in a general partnership, and any number of limited partners.[23] These limited partners contribute capital, share in profits, and, as long as they exercise no control over the partnership management, enjoy liability limited to the amount of their investment.[24] One area of firm management in which the Uniform Limited Partnership Act specifically restricts limited partners is that of legal actions by or against the partnership: "A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership."[25]

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17. *Id.;* Underwood v. Maloney, 256 F.2d 334, 337-38 (3d Cir.), *cert. denied,* 358 U.S. 864 (1958).

18. *See, e.g.,* Underwood v. Maloney, 256 F.2d 334, 338, 341 (3d Cir.), *cert. denied,* 358 U.S. 864 (1958); *cf.* McSparran v. Weist, 402 F.2d 867, 870 (3d Cir. 1968) (distinction made between citizenship and capacity in action involving a personal representative, not an unincorporated association), *cert. denied,* 395 U.S. 903 (1969).

19. Marshall v. Baltimore & O.R.R., 57 U.S. (16 How.) 314, 325-29 (1854).

20. Eastern Metals Corp. v. Martin, 191 F. Supp. 245, 253 (S.D.N.Y. 1960). *Accord,* Great Southern Fire Proof Hotel Co. v. Jones, 177 U.S. 449, 455-56 (1900).

21. Ruzicka v. Rager, 305 N.Y. 191, 197, 111 N.E.2d 878, 881 (1953); Lanier v. Bowdoin, 282 N.Y. 32, 38, 24 N.E.2d 732, 735 (1939).

22. 6 UNIFORM LAWS ANNOTATED 83 (Supp. 1977).

23. UNIFORM LIMITED PARTNERSHIP ACT §§ 1, 9.

24. *Id.* §§ 4, 7, 10, 17, 22, 26.

25. *Id.* § 26.

While this restriction is not without judicially created exceptions,[26] it is well-recognized and generally followed.[27]

II. Judicial Application of Citizenship and Capacity Rules to Limited Partnerships

A. *The Cases from* Colonial Realty *to* Carlsberg Resources

The incapacity of limited partners under state law appears to be the major reason why the Second Circuit in *Colonial Realty* held that identity of citizenship between the plaintiff and the limited partners of the defendant limited partnership would not defeat diversity jurisdiction.[28] Affirming the decision of the court below, the circuit court adopted the rule that, absent a claim that the partnership was insolvent, an action against a limited partnership would be considered to be against the general partners only.[29]

In *Woodward v. D.H. Overmyer Co.*,[30] the Second Circuit made it explicit that *Colonial Realty* applied only to limited partnerships and that the long-standing rule that the court looks to the partners' citizenship for purposes of diversity jurisdiction was not altered as to general partnerships. *Woodward* was cited, and *Colonial Realty* implicitly followed, in *Erving v. Virginia Squires Basketball Club*.[31] In holding that it had jurisdiction of the action against the defendant limited partnership by virtue of diversity of citizenship, the *Erving* court stated that "[f]or purposes of diversity jurisdiction the citizenship of the general partners is controlling."[32] In addition to the *Woodward* and *Erving* holdings, dicta in several district court opinions have recognized the *Colonial Realty* rule.[33]

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26. *E.g.*, Linder v. Vogue Inv., Inc., 239 Cal. App. 2d 338, 48 Cal. Rptr. 633 (1966) (allowing discretionary intervention); Riviera Congress Assocs. v. Yassky, 18 N.Y.2d 540, 223 N.E.2d 876, 277 N.Y.S.2d 386 (1966) (holding that limited partners may sue when general partners wrongfully refuse to do so).

27. *E.g.*, Ga.-Pak Lumber Co. v. Nalley, 337 So. 2d 1270 (Miss. 1976); Silver v. Chase Manhattan Bank, 44 App. Div. 2d 797, 355 N.Y.S.2d 387 (1974); Lieberman v. Atlantic Mut. Ins. Co., 62 Wash. 2d 922, 385 P.2d 53 (1963).

28. 358 F.2d at 183-84.

29. *Id.* The district court opinion is reported at [1964] Fed. Sec. L. Rep. (CCH) ¶ 91,351 (S.D.N.Y. 1964).

30. 428 F.2d 880, 883 (2d Cir. 1970), *cert. denied*, 400 U.S. 993 (1971).

31. 349 F. Supp. 709, 711 (E.D.N.Y. 1972).

32. *Id.*

33. C.P. Robinson Constr. Co. v. National Corp. for Hous. Partnerships, 375 F. Supp. 446, 449 (M.D.N.C. 1974); Sands v. Geller, 321 F. Supp. 558, 561 (S.D.N.Y. 1971); Garfield & Co. v. Wiest, 308 F. Supp. 1107, 1108 n.3 (S.D.N.Y.), *aff'd*, 432 F.2d 849 (2d Cir. 1970), *cert. denied*, 401 U.S. 940 (1971).

In *Carlsberg Resources,* the Third Circuit specifically rejected the reasoning and holding of *Colonial Realty* and found instead that because 38 of the plaintiff's 1500 limited partners had identity of citizenship with the defendant, the district court had properly ruled that it had no jurisdiction based on diversity.[34] To hold otherwise, said the appellate court, would be detrimental to considerations of judicial economy and principles of federalism[35] and would make diversity jurisdiction in such situations "dependent upon the vagaries of state law."[36] Judge Hunter dissented from the majority view and urged the court to follow *Colonial Realty* because, in his words, "tak[ing] cognizance, for diversity purposes, of persons who . . . are clearly prohibited from taking part in a suit by or against the partnership . . . appeals neither to logic nor to common sense."[37]

Colonial Realty and *Carlsberg Resources* suggest two ways of deciding whether the citizenship of the limited partners must be considered in determining the citizenship of the partnership. The first method is to determine whether capacity rules should be considered in making the jurisdictional determination. The second is to decide whether the general rule as to unincorporated associations applies to modern limited partnerships without modification.

B. Use of Capacity Rules in the Jurisdictional Determination

1. Identification of the party prior to the application of capacity rules

The position of the *Carlsberg Resources* majority can be summarized as follows: One of the parties to this lawsuit is an unincorporated association. It is well-settled that for diversity purposes the court should look to the citizenship of all the members of an unincorporated association. If there is identity of citizenship between any association member and an adverse party, the court has no jurisdiction. Once the court's lack of jurisdiction is established, the operation of capacity rules cannot create jurisdiction.

The dissent disagreed that the identity of the party is known when a limited partnership sues or is sued in federal court and felt that it is insufficient merely to say that the party is an unin-

34. 554 F.2d 1254 (3d Cir. 1977).
35. *Id.* at 1262. *See* notes 59-62 and accompanying text *infra.*
36. 554 F.2d at 1261.
37. *Id.* at 1265.

corporated association. The dissent would look behind the partnership entity to examine the capacity of each member to see who is really a party.[38]

The fundamental conflict, then, between the majority and the dissent on the use of capacity rules in the jurisdictional determination arises out of the question whether the court can identify the party for diversity purposes prior to applying capacity rules. The majority responded to the question with an unsupported generalization: "[I]ssues pertaining to the capacity to sue, while hardly lacking in significance, are deserving of consideration only after the jurisdiction of the federal court has been firmly established."[39] That response is inadequate when it is recognized that the issue in *Colonial Realty* and *Carlsberg Resources* arises from a unique configuration of the rules of citizenship and capacity as they relate to entities and individuals. First, as to citizenship, the entity is incapable of having citizenship (except by reference to the citizenship of its members), but the individuals who compose the entity do have citizenship. Second, as to capacity, the entity has the capacity to sue or be sued while some members of the entity lack such capacity individually. Finally, those members who individually lack capacity are those whose citizenship would destroy diversity.

A careful evaluation of this alignment of citizenship and capacity rules leads to the conclusion that whenever an unincorporated association is in federal court under diversity jurisdiction, it is because of the operation of entity capacity rules. Because an unincorporated association does not have citizenship, it can invoke diversity jurisdiction only because a group of real people having citizenship are bound together as a juridical entity and are given capacity as an entity to sue or be sued.[40] Thus, capacity rules are used to mold a group of individuals into an aggregate party in actions involving noncorporate entities. Since it is inaccurate to assert that capacity rules are relevant only after jurisdiction has been established, that assertion is certainly insufficient to justify denying the application of individual capacity rules.

The *Carlsberg Resources* dissent's response to the question whether the court can identify the party for diversity purposes prior to applying capacity rules was an argument that real parties

38. *Id.* at 1263-64.

39. *Id.* at 1260.

40. *See* notes 4-15 and accompanying text *supra.*

are "those who have the capacity to bring suit."[41] Although this may be a good argument for "counting" only the general partners, it does not explain why the partnership entity should not be considered the "real party," since the partnership has the capacity to sue. Perhaps the best reason for arguing that it is insufficient for diversity jurisdiction purposes to identify a party merely as a noncorporate entity is that the entity has no citizenship of its own and therefore the court's jurisdiction must ultimately hinge on individual citizenship. If jurisdiction depends on individual citizenship, it seems reasonable to refer to individual capacity rules. While the dissent seemed to sense the rationale,[42] the argument was never articulated.

2. Reference to state law

Presumably because of Federal Rule 17(b), the Second Circuit in *Colonial Realty* would refer to state capacity-to-sue rules to determine which members of the partnership are really parties for citizenship purposes.[43] The *Carlsberg Resourses* majority argued that referring to capacity in diversity determinations would mean referring to "the vagaries of state law"[44] for resolution of a strictly federal issue, the jurisdiction of federal courts. "Availability of diversity jurisdiction," the majority said, "ordinarily should not rest upon considerations of state law but rather upon uniform and readily cognizable principles of general application."[45]

The majority's refusal to refer to state law, however, is ill-founded. Rule 17(b) clearly mandates reference to state law. Moreover, state capacity rules are generally applied to identify the party whose citizenship is to be "counted" for diversity purposes in representative actions.[46] In addition, the nearly universal

41. 554 F.2d at 1263.

42. *Id.* at 1264-65.

43. The Second Circuit never mentioned Rule 17(b). The Third Circuit in *Carlsberg Resources,* however, did discuss the rule. *Id.* at 1261.

44. *Id.*

45. *Id.*

46. *E.g.,* Fennell v. Monongahela Power Co., 350 F.2d 867 (4th Cir. 1965); Fallat v. Gouran, 220 F.2d 325 (3d Cir. 1955) (holding that in determining the existence of diversity of citizenship for jurisdictional purposes, the citizenship of a guardian controls and not that of the incompetent, whether or not the incompetent is the real party in interest, provided the guardian has capacity to sue); Xaphes v. Mossey, 224 F. Supp. 578, 579 (D. Vt. 1963); Meeham v. Central R.R., 181 F. Supp. 594, 603-04 (S.D.N.Y. 1960). *But see* McSparran v. Weist, 402 F.2d 867, 876 (3d Cir. 1968) (limiting the *Fallat* holding to situations not involving collusive manufacture of diversity), *cert. denied,* 395 U.S. 903

adoption of section 26 of the Uniform Limited Partnership Act dictates that its provisions must realistically be regarded as "uniform and readily cognizable principles of general application."

The majority also urged that using Rule 17 in such a way that if affects the court's jurisdiction is barred Rule 82, which specifies that the "rules [of civil procedure] shall not be construed to extend or limit the jurisdiction of the United States district courts."[47] Arguably, Rule 82 ought to be a neutral factor in resolving the issues of jurisdiction over modern limited partnerships since the issue does not entail an extension or limitation of a previously established jurisdiction but merely involves a clarification of jurisdictional requirements in a context of first impression. Ironically, the Third Circuit, in previously rejecting an argument similar to the one made in *Carlsberg Resources,* had said that "referring to Rule 17 only to define the jurisdictional test as already formulated would not seem to be prohibited."[48] Thus, Rule 82 in this context is at best only a makeweight that reveals the paucity of support for the court's position.

C. Applicability of the General Rule

A major thrust of the *Carlsberg Resources* decision was that the general rule as to unincorporated associations should be applied strictly by requiring every member of the limited partnership to be "counted" for diversity purposes. The general rule was developed in cases where the Supreme Court was confronted with the entity argument—that unincorporated associations should have a separate citizenship as do corporations. *Colonial Realty* and *Carlsberg Resources,* however, introduce two additional variables not considered in the Supreme Court cases. First, the entity argument was *not* made in *Colonial Realty* and *Carlsberg Resources;* second, those cases involved unincorporated associations composed of members with differing status both in the firm organizational structure and as to judicial capacity.

(1969); Martineau v. City of St. Paul, 172 F.2d 777 (8th Cir. 1949) (adopting the "real party in interest" test).

47. FED. R. CIV. P. 82. The majority in *Carlsberg Resources* misquoted this rule by omitting the words "to limit," thereby suggesting a one-sided operation of the rule. 554 F.2d at 1261.

48. Fallat v. Gouran, 220 F.2d 325, 328 (3d Cir. 1955). *Accord,* Fennell v. Monongahela Power Co., 350 F.2d 867 (4th Cir. 1965) (holding that disavowing diversity jurisdiction because plaintiff lacked capacity to sue under applicable state law did not violate Federal Rule 82).

The *Carlsberg Resources* majority recognized that *Chapman v. Barney,*[49] *Great Southern Fire Proof Hotel Co. v. Jones,*[50] and *United Steelworkers v. R.H. Bouligny, Inc.,*[51] did not address the question presented in its case, but found implicit support in *Chapman* for the proposition that "considerations of varying membership status should not bear on the fundamental inquiry whether diversity exists."[52] This support was based on the fact that the joint stock company in *Chapman* had authority to bring suit in the name of its president.[53] This support is inconclusive, however, since there is no indication that the other firm members were incapable of being parties to a suit brought by the firm or that the Court or the parties were concerned with anything more than the entity argument.

The Third Circuit also cited *Bouligny* as justification for taking the "rather hard line" that every single member of the limited partnership must be "counted" in the diversity determination.[54] This reliance on *Bouligny* is also questionable. Not only was the argument before the Supreme Court in that case an entity argument, but a major reason why the Court declined to expand the *Marshall* rule[55] to noncorporate entities was because of the enormous practical problems presented by such an expansion.[56] The great burden of fashioning a test for determining the state of which a typical local-national union is a citizen was only one of those difficulties.[57] The Court felt that these problems

49. 129 U.S. 677 (1889).

50. 177 U.S. 449 (1900).

51. 382 U.S. 145 (1965).

52. 554 F.2d at 1264.

53. *Chapman* involved a joint stock company that had filed a diversity action alleging that it was a citizen of New York. The action was brought in the name of Barney, the company president, as allowed by state law, but the complaint failed to allege the citizenship of the president or any of the members of the firm. The Supreme Court held that because the company was not a corporation, it could not be a citizen, and that since the record did not show the citizenship of the president or the members, the lower court had no jurisdiction. 129 U.S. at 682.

54. 554 F.2d at 1259.

55. *See* note 7 and accompanying text *supra.*

56. 382 U.S. at 150-53. That burden was candidly recognized: "If we were to accept petitioner's urgent invitation to amend diversity jurisdiction so as to accommodate its case, we would be faced with difficulties which we could not adequately resolve." *Id.* at 152.

57. Other difficulties were the problem of determining whether the union in that case was sufficiently typical or representative to form the basis of devising a new rule, the difficulty of foreseeing the long-range and widespread implications of such an expansion, and the trouble of deciding whether other rules applied to corporations would also apply to noncorporate bodies. *Id.* at 152-53.

should be left to the legislative branch to resolve.[58] There are no such difficulties with the issue in *Colonial Realty* and *Carlsberg Resources* because the citizenship of the limited partnership may be determined without tampering with the present definition of citizenship. The only findings necessary to implement the *Colonial Realty* decision, identification of the general partners and determination of their citizenship, would be extremely simple and well within the capability of any court. For these reasons, it is inaccurate to assert that *Bouligny* mandates that the general rule must be strictly interpreted so as to require that every member of the limited partnership be "counted."

III. Principles of Federalism and Questions of Policy

Resolution of the conflict between the positions of the Second and Third Circuits must include examination of principles of federalism and questions of policy. The majority in *Carlsberg Resources* asserted that the exercise of diversity jurisdiction in that case would be detrimental to the federal system in that it would infringe upon the power of the states to resolve conflicts.[59] Since the same is true of *any* exercise of diversity jurisdiction, this assertion simply criticizes the entire notion of such federal jurisdiction. While that criticism has some validity, it should be kept in mind that there are other considerations that support the exercise of diversity jurisdiction.[60] These must also be weighed along with any detriment to the states.

Another major argument of the *Carlsberg Resources* majority was that there is a powerful and pervasive policy against expanding diversity jurisdiction because of its detrimental effect on judicial economy.[61] This argument, however, reduces to one for *federal* judicial economy, because approximately the same amount of judicial resources would be expended whether the case

58. *Id.* at 152.

59. 554 F.2d at 1257.

60. Some considerations that have been suggested include avoidance of local prejudice against out-of-state litigants, encouragement of commercial investment, availability of federal procedural advantages, and achievement of uniformity of decision in commercial law, conflicts of law, and international law. *See generally* American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts 99-110, 458-64 (1969); Friendly, *The Historical Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483 (1928); Moore & Weckstein, *Corporations and Diversity of Citizenship Jurisdiction: A Supreme Court Fiction Revisited*, 77 Harv. L. Rev. 1426, 1445-51 (1964); Note, *Federal Diversity Jurisdiction—Citizenship for Unincorporated Associations*, 19 Vand. L. Rev. 984, 987-89 (1966).

61. 554 F.2d at 1256-57.

were tried in federal or state court. Serious questions of judicial integrity would be raised if questions of workload and the size of the federal docket were given undue emphasis in making jurisdictional determinations. To the extent that the argument for judicial economy includes judges' concern for the size of their own workload, it should be disregarded.

Other policy considerations make the nature of the artificial person relevant to the jurisdictional determination. Entities with functionally similar structure—*e.g.*, limited partnerships and corporations—should receive similar treatment, regardless of their denomination as corporate or noncorporate. This argument essentially urges the considerations of basic fairness and substance over form. Normally such an argument runs afoul of the traditions against redefining citizenship to include artificial persons other than corporations.[62] Those difficulties, however, are not encountered in affording limited partnerships treatment more akin to that given corporations (more ready access to federal courts) because there is no need to tamper with the definition of citizenship in reaching the *Colonial Realty* result. Thus, a policy of similar treatment for entities of similar structure can be followed.

IV. Conclusion

The widespread use of limited partnerships makes it certain that the issue faced in *Colonial Realty* and *Carlsberg Resources* will present itself again, and the question of the availability of diversity jurisdiction to such entities will then need to be decided. While giving limited partnerships their own citizenship seems to be precluded by *Bouligny*, serious questions as to both the applicability of the noncorporate entity general rule and the necessity of using individual capacity rules to identify the parties whose citizenship should be "counted" for diversity purposes suggest that *Colonial Realty* be followed. Considerations of consistency and judicial integrity also direct that the identity of citizenship between limited partners and an adverse party not defeat federal diversity jurisdiction.

62. *See, e.g.*, United Steelworkers v. R.H. Bouligny, Inc., 382 U.S. 145 (1965).