



Volume 93 | Issue 1

Article 4

September 1990

Carden v. Arkoma Associates: A Refusal to Extend the Rule Treating Corporations as Citizens to Limited Partnerships for Federal Diversity Jurisdiction

Joseph J. Buch

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

 Part of the [Business Organizations Law Commons](#), and the [Jurisdiction Commons](#)

Recommended Citation

Joseph J. Buch, *Carden v. Arkoma Associates: A Refusal to Extend the Rule Treating Corporations as Citizens to Limited Partnerships for Federal Diversity Jurisdiction*, 93 W. Va. L. Rev. (1990).

Available at: <https://researchrepository.wvu.edu/wvlr/vol93/iss1/4>

This Student Note is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

CARDEN V. ARKOMA ASSOCIATES: A REFUSAL TO EXTEND THE RULE TREATING CORPORATIONS AS "CITIZENS" TO LIMITED PARTNERSHIPS FOR FEDERAL DIVERSITY JURISDICTION

I. INTRODUCTION	147
II. STATEMENT OF THE CASE	149
III. PRIOR LAW.....	151
A. <i>The Corporation</i>	151
B. <i>Unincorporated Entities</i>	153
C. <i>Navarro Savings Association v. Lee: The "Real Party to the Controversy" Test</i>	155
IV. ANALYSIS OF THE HOLDING.....	157
A. <i>A Limited Partnership as a "Citizen" in Its Own Right</i>	158
B. <i>Discriminating Between General and Limited Partners</i>	160
C. <i>A Deference to Congress</i>	161
D. <i>The Dissenting Opinion</i>	162
V. CONCLUSION	163

I. INTRODUCTION

Article III of the United States Constitution provides that "[t]he Judicial Power shall extend to . . . controversies . . . between citizens of different States."¹ Congress first authorized the federal courts to exercise diversity jurisdiction in the Judiciary Act of 1789.² In its current form, the diversity statute provides that "the district courts shall have original jurisdiction of all civil actions where the matter in the controversy exceeds . . . \$50,000 . . . , and is between . . . citizens of different States."³

1. U.S. CONST. art. III, § 2, cl. 1.

2. The Judiciary Act, Ch. 20, § 11, Stat. 78 (1789).

3. 28 U.S.C. § 1332(a) (Supp. 1990).

The United States Supreme Court has always interpreted the diversity statute to require a complete diversity of citizenship between the parties.⁴ However, the multitude of artificial legal entities⁵ doing business presents the potential for numerous lawsuits where determining the parties and their corresponding citizenship becomes very uncertain. For this reason, determining the citizenship of an artificial business entity has been the source of heated debate and lengthy discussion.⁶

Recently, the United States Supreme Court, in *Carden v. Arkoma Associates*,⁷ considered whether an artificial entity may be a citizen in its own right or whether the citizenship of the members comprising the entity should govern for the purpose of federal jurisdiction. Specifically, the Court was asked to determine whether, in a suit brought by a limited partnership, the citizenship of the limited partners must be taken into account to establish whether complete diversity exists.⁸

In order to answer this question, the Supreme Court was required to first address two issues:

- (1) May a limited partnership be considered in its own right a citizen of the State which created it, and;
- (2) May a federal court look to the citizenship of only the general partners, but not the limited partners, to determine whether there is complete diversity of citizenship?⁹

4. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806) (holding that "if there be two or more joint plaintiffs, and two or more joint defendants, each of the plaintiffs must be capable of suing each of the defendants, in the courts of the United States, in order to support the jurisdiction").

5. A legal entity is defined as "An entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations." BLACK'S LAW DICTIONARY 804 (5th ed. 1979). As used throughout this note, the term "entity" includes *inter alia*, corporations, partnerships, limited partnerships, unions, joint stock companies, and business trusts.

6. See generally Note, *Federal Jurisdiction — Diversity of Citizenship — The Citizenship of Limited Partners Must Be Considered in Determining Whether Diversity Jurisdiction Exists*, 46 GEO. WASH. L. REV. 657 (1978); Note, *Limited Partners Limit the Availability of Federal Diversity Jurisdiction: Stouffer Corp. v. Breckenridge*, 63 ST. JOHN'S L. REV. 571 (1989). *Contra* Note, *Diversity Jurisdiction Over Unincorporated Business Entities: The Real Party In Interest as a Jurisdictional Rule*, 56 TEX. L. REV. 243 (1978); Note, *Who Are the Real Parties In Interest for Purposes of Determining Diversity Jurisdiction for Limited Partnerships?*, 61 WASH. U.L.Q. 1051 (1984).

7. 110 S. Ct. 1015 (1990).

8. *Id.* at 1016.

9. *Id.* at 1017.

Ultimately, a divided Court held that the citizenship of each limited partner was in fact critical to the determination of the citizenship of the limited partnership.¹⁰ With this holding, the Court firmly resisted extending the rule treating corporations as “citizens” to other artificial entities.¹¹

This comment discusses *Carden v. Arkoma Associates* to allow the reader to more fully understand the majority’s decision. The holding is fraught with technical and logical minutiae. Yet, upon close examination, the reasoning of the Court, the strict adherence to precedent, and the avoidance of the occasion to legislate from the bench make the holding in *Carden* sound.

II. STATEMENT OF THE CASE

Arkoma Associates [hereinafter Arkoma] was a limited partnership¹² organized under the laws of Arizona.¹³ It brought suit in the United States District Court for the Eastern District of Louisiana against C. Tom Carden and Leonard L. Limes, citizens of Louisiana.¹⁴ Arkoma’s underlying claim in this case arose from a contract dispute where Carden and Limes had acted as guarantors of an agreement by which Arkoma leased certain drilling equipment to Magee Drilling Company, Inc. [hereinafter Magee Drilling], a Texas corporation.¹⁵ Arkoma relied upon diversity of citizenship for federal jurisdiction.¹⁶

Carden and Limes moved for dismissal on the ground that one of Arkoma’s limited partners was a citizen of Louisiana and thus

10. *Id.*

11. *Id.* at 1018.

12. A partnership is created under state law. *See* A. BROMBERG, CRANE AND BROMBERG ON PARTNERSHIP § 26, at 144 (1968). The general partners manage the business and are subject to personal liability, while limited partners are exempt from liability so long as they refrain from participating in management. *Id.* at 146. *See also* REVISED UNIFORM LIMITED PARTNERSHIP ACT, 6 U.L.A. 200 (Supp. 1988).

13. ARIZ. REV. STAT. ANN. § 29-302 (current version at ARIZ. REV. STAT. ANN. § 29-308 (1989)). *See also* Arkoma Assoc. v. Carden, 874 F.2d 226, 228-29 n.2 (5th Cir. 1988) (discussing the two statutes).

14. *Carden*, 110 S. Ct. at 1016.

15. *Id.*

16. *Id.*

destroyed complete diversity.¹⁷ The district court rejected this jurisdictional challenge, but certified the question for interlocutory appeal which the Fifth Circuit declined.¹⁸

Thereafter, Magee Drilling intervened alleging claims against Arkoma for separate violations of Texas law.¹⁹ Also, Magee Drilling joined Carden and Limes in a counterclaim against Arkoma arising from the original contract dispute.²⁰ Following a bench trial, the district court awarded Arkoma money damages plus interest and the attorney fees for the breach of contract claim.²¹ Further, the court dismissed Carden and Limes' counterclaim as well as Magee Drilling's intervention and counterclaim.²²

Carden, Limes, and Magee Drilling appealed.²³ The Fifth Circuit affirmed the rulings of the district court in favor of Arkoma.²⁴ With respect to the jurisdictional challenge, the Fifth Circuit found the requisite complete diversity. It ruled that the citizenship of the Arkoma limited partnership should be determined with reference to only the partnership's general partner and not with respect to each of the individual limited partners.²⁵

Again, the petitioners appealed and the United States Supreme Court granted certiorari.²⁶ Considering only the jurisdictional challenge, the Court held that complete diversity was lacking with respect to Carden and Limes.²⁷ Justice Scalia delivered the opinion of the Court which concluded that the single limited partner from Louisiana would destroy diversity.²⁸

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Arkoma Assoc. v. Carden*, 874 F.2d 226 (5th Cir. 1988).

24. *Id.* at 227.

25. *Id.* at 229.

26. *Carden v. Arkoma Assoc.*, 109 S. Ct. 1952 (1989).

27. 110 S. Ct. 1015, 1017.

28. SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, STEVENS, and KENNEDY, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined. *Id.*

The Court reversed the holding of the Fifth Circuit for lack of jurisdiction and remanded the case.²⁹ On remand,³⁰ the Fifth Circuit vacated the judgment of the district court as it related to the claims of Arkoma and the counterclaims of Carden and Limes.³¹ As no question of diversity existed between Arkoma and Magee Drilling, the ruling of the district court rejecting Magee Drilling's counterclaim and intervention was affirmed.³²

III. PRIOR LAW

The United States Supreme Court considers a corporation a "citizen" and has done so for nearly 150 years.³³ However, the Court has firmly resisted extending this notion of citizenship to other artificial entities.³⁴ As the Court has not had a prior opportunity to specifically consider the nature of a limited partnership, the following provides an overview of the Court's reasoning for the distinction between incorporated and unincorporated entities and a synopsis of its prior holdings in cases involving various artificial entities.

A. *The Corporation*

When the Court was first asked to consider the nature of a corporation for the purpose of diversity of citizenship for federal jurisdiction, it refused to deem a corporation a "citizen" in its own right.³⁵ In *Bank of United States v. Deveaux*, the Court held that "a corporation . . . is certainly not a citizen"³⁶ and that to determine citizenship for the purpose of diversity jurisdiction, the Court must "look to the character of the individuals who compose [it]."³⁷

Thirty-five years later, the Court expressly overruled *Deveaux* in *Louisville, C. & C. R. Co. v. Letson*.³⁸ In deciding *Letson*, the Court

29. *Carden*, 110 S. Ct. at 1022.

30. *Arkoma Assoc. v. Carden*, 904 F.2d 5 (5th Cir. 1990).

31. *Id.* at 7.

32. *Id.*

33. *Carden*, 110 S. Ct. at 1017.

34. *Id.* at 1018.

35. *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809).

36. *Id.* at 86.

37. *Id.* at 91-92.

38. 43 U.S. (2 How.) 497 (1844).

put great emphasis on the importance of incorporation.³⁹ As an entity formally recognized by the state in which it was incorporated, the corporation was authorized to sue and be sued in the corporate name.⁴⁰ Its members were not fixed. In fact, the very essence of the incorporated entity was its immortality.⁴¹ "The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men."⁴² These reasons, coupled with a popular distaste for the holding in *Deveaux*,⁴³ led the Court to mandate that a corporation was "capable of being treated as a citizen of [the State which created it], as much as a natural person."⁴⁴

This holding was narrow in that it explicitly confined the entity-as-a-citizen rationale to corporations.⁴⁵ *Letson* was reviewed and affirmed ten years later in *Marshall v. Baltimore & O. R.R. Co.*⁴⁶ Though the Court in *Marshall* relied upon the somewhat different theory that "those who use the corporate name, and exercise the faculties conferred by it"⁴⁷ should be presumed conclusively to be citizens of the corporation's state of incorporation, it too found that a corporation, exclusively, could be a "citizen" for diversity jurisdiction.⁴⁸

Letson and *Marshall* have since been codified, and somewhat expanded by Congress. Section 1332(c) of title 28 of the U.S. CODE states 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."⁴⁹ It is important to note that while this

39. *Id.* at 558.

40. *Id.* at 552.

41. *Id.* at 559.

42. *Id.*

43. The court discussed the general disapproval of its prior holdings in *Strawbridge* and *Deveaux*. "[They] have never been satisfactory to the bar, and [they are] not, especially [*Deveaux*], entirely satisfactory to the Court that made them." *Id.* at 555. But rather than appear as bowing to popular pressure, the Court found the aforementioned reasons to justify overturning *Deveaux*. See *supra* notes 38-42.

44. *Id.* at 558.

45. *Id.*

46. 57 U.S. (16 How.) 314 (1853).

47. *Id.* at 329.

48. *Id.*

49. 28 U.S.C. § 1332(c) (Supp. 1990).

legislation makes clear Congress' intention to not unduly restrict a corporation's access to federal court, it deals exclusively with incorporated entities and is silent as to the expected handling of unincorporated entities by the court.

B. Unincorporated Entities

*Chapman v. Barney*⁵⁰ was the first case subsequent to *Letson* where the Supreme Court was asked to consider whether an unincorporated association may be given corporate-like "entity" status for the purpose of determining diversity jurisdiction.⁵¹ *Chapman* involved an unincorporated joint stock company⁵² organized under the laws of New York. The Court held that a joint stock company, as an entity, could not be regarded as a "citizen" precisely because it was not incorporated.⁵³ The Court ruled that, as a joint stock company is merely a partnership,⁵⁴ diversity jurisdiction could be invoked only if there existed complete diversity, that is, if each member of the joint stock company was diverse from each and every opposing party.⁵⁵ Further, the Court concluded that even though the joint stock company "may be authorized by the laws of the State of New York to bring suit . . . that fact cannot give the company power, by that name, to sue in federal court."⁵⁶

This incorporated/unincorporated distinction was again used in *Great Southern Fire Proof Hotel Co. v. Jones*.⁵⁷ This case involved a Pennsylvania limited partnership association.⁵⁸ Citing *Chapman*,

50. 129 U.S. 677 (1889).

51. *Id.* at 682.

52. A joint stock company is a capital pooling entity with centralized management and transferable shares like a corporation, yet whose members maintain the property rights and liabilities of partners in a general partnership. Unlike a corporation, a joint stock company is an entity formed pursuant to agreement of the parties rather than by a grant of authority from the state of organization. A. BROMBERG, *supra* note 12, § 34, at 178.

53. *Chapman*, 129 U.S. at 682.

54. *Id.*

55. *Id.*

56. *Id.*

57. 177 U.S. 449 (1900).

58. In a limited partnership association, Pennsylvania law limits the partner's liability to the amount of capital contribution to the partnership. *See* 59 PA. CONST. STAT. §§ 341-61 (1964), *repealed in part by* 1965 PA. LAWS 519, § 50(g). The association is unlike the limited partnership in the present case because it has only one class of partner. Association partners have ownership rights in partnership property not unlike the rights of partners in a general partnership. A. BROMBERG, *supra* note 12, §

34, at 178-79.

the Court held that although Pennsylvania law authorized a limited partnership association to "sue and be sued by the name of the association,"⁵⁹ it was not a corporation. Though it possessed "some of the characteristics of a corporation" and was deemed a "citizen" by the law of the state which created it, it may not be deemed a "citizen" under the jurisdictional rule established for corporations.⁶⁰ Further, the Court added "that rule [treating corporations as entities in their own right] must not be extended."⁶¹

These rulings, limiting access to federal court to occasions when each member of an unincorporated entity satisfied diversity, are not restricted to the late eighteenth and early nineteenth centuries. As recently as 1965, in *United States v. R.H. Bouligny, Inc.*,⁶² the Supreme Court considered whether an unincorporated labor union, as an entity, should be deemed a "citizen" for diversity jurisdiction. The Court unanimously held that the "doctrinal wall of *Chapman v. Barney*"⁶³ must not be breached. The Court in *Bouligny* refused to consider the location of the union's principal place of business for citizenship purposes.⁶⁴ Instead, it ruled that citizenship of each member must be considered and that complete diversity must exist to command federal jurisdiction.⁶⁵

The only transgression from this firmly held principle occurred in the case of *Puerto Rico v. Russell & Co.*⁶⁶ *Russell* involved a Puerto Rican entity known as a *sociedad en comandita*.⁶⁷ Though the entity was unincorporated by United States' standards, the Court realized that, though a creature of the civil law, it was formally recognized by the Code of Puerto Rico as a "juridical entity."⁶⁸ In

59. *Great Southern*, 177 U.S. at 455.

60. *Id.* at 456.

61. *Id.* at 457.

62. 382 U.S. 145 (1965).

63. *Id.* at 151.

64. *Id.* at 146.

65. *Id.* at 147.

66. 288 U.S. 476 (1933).

67. The Court examined the *sociedad en comandita* and expressly rejected the notion that it was the forerunner to the modern limited partnership. It is an entity formally recognized by Puerto Rico and as a continuing entity, more closely resembles a corporation. *Russell*, 288 U.S. at 481.

68. *Russell*, 288 U.S. at 479.

justifying why the *sociedad en comandita* was treated as an entity for diversity jurisdiction without regard to the citizenship of its members, the Court later reasoned in *Bouligny* that it had been "fitting an exotic creation of the [Puerto Rican] civil law . . . into a federal scheme which knew it not."⁶⁹ Notwithstanding this result, the Court in *Russell* was quick to note that barring analogous extenuating facts, "the tradition of the common law, . . . to treat as legal persons only incorporated groups and to assimilate all others to partnerships"⁷⁰ would be strictly observed.

C. *Navarro Savings Association v. Lee: The "Real Party to the Controversy" Test*

Recently, not all of the federal circuits have strictly followed this incorporated/unincorporated dichotomy.⁷¹ Those that have seen fit to allow an unincorporated association to be treated as a "citizen" for diversity jurisdiction without regard to the citizenship of each member have relied upon the Supreme Court decision in *Navarro Sav. Ass'n v. Lee*.⁷² As the reversal in the present case indicated, this reliance was unfounded and flowed from an over-broad reading of *Navarro*.⁷³ However, this case merits discussion, as its misinterpretation has been the source of substantial controversy.⁷⁴

Navarro involved a Massachusetts business trust.⁷⁵ Eight individual trustees brought suit in their own names against a Texas sav-

69. *Bouligny*, 382 U.S. at 151.

70. *Russell*, 288 U.S. at 480.

71. See *Mesa Operating Ltd. Partnership v. Louisiana Intrastate Gas Corp.*, 797 F.2d 238, 240 (5th Cir. 1986) (holding that when it is possible to clearly identify a class of members of a partnership as real parties to the controversy, citizenship of that class alone is relevant for diversity purposes); *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178 (2nd Cir.), cert. denied, 358 U.S. 817 (1966) (holding that nondiverse limited partners do not destroy diversity where, under applicable New York law, limited partners are not real parties to the controversy).

72. 446 U.S. 458 (1980).

73. *Navarro* provided the basis of the Fifth Circuit's ruling for the case at hand. The Circuit Court found that as a result of *Navarro*, the citizenship of the limited partners was "irrelevant" and that the citizenship of only the general partners should concern the Court. *Arkoma Assoc. v. Carden*, 874 F.2d 226, 228 (5th Cir. 1988).

74. The Supreme Court spent substantial time distinguishing *Navarro* in order to clearly narrow its holding. *Carden v. Arkoma Assoc.*, 110 S. Ct. 1015, 1019-21 (1990).

75. A Massachusetts business trust is defined as: "[A]n unincorporated business organization created by an instrument, by which property is to be held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing the beneficial interest in the trust estate." 13 AM. JUR. 2D *Business Trusts* § 1 (1964).

ings and loan association in the United States District Court for the Northern District of Texas.⁷⁶ No trustee was a resident of Texas, but some of the trust's beneficial shareholders were.⁷⁷

Navarro Savings Association moved for dismissal for lack of complete diversity alleging that the beneficiaries were the real parties to the controversy and thus any determination of citizenship should embrace them.⁷⁸ Concluding that a business trust is in fact a citizen of every state in which its shareholders reside, the district court dismissed the matter for lack of jurisdiction.⁷⁹

On appeal, the Fifth Circuit Court of Appeals reversed, explaining that the trustees were real parties in interest because they had full power to manage and control the trust and to sue on its behalf.⁸⁰ The Fifth Circuit directed the district court to proceed to trial on the merits as complete diversity existed among the real parties in interest.⁸¹

The Supreme Court affirmed the Fifth Circuit, holding that "[f]or more than 150 years, the law has permitted trustees . . . to sue in their own right, without regard to the citizenship of the trust beneficiaries."⁸² Further, the Court concluded that the trustees' interest was real and substantial, noting that "[t]hey have legal title; they manage the assets; they control litigation. In short, they are real parties to the controversy."⁸³

However, this application of the real party to the controversy test was with respect to the eight trustees as individuals. The entity, the trust, did not bring the suit. The suit was brought by eight individuals and the question the court considered was whether these individuals, whose citizenship was neither in dispute nor ever called into question, were the proper parties to bring the suit.⁸⁴ If they

76. *Navarro*, 446 U.S. at 459.

77. *Id.* at 460.

78. *Id.*

79. *Lee v. Navarro Sav. Ass'n*, 416 F. Supp. 1186, 1189 (N.D. Tex. 1976).

80. *Lee v. Navarro Sav. Ass'n*, 597 F.2d 421, 427 (5th Cir. 1979).

81. *Id.* at 428.

82. *Navarro*, 446 U.S. at 465-66.

83. *Id.*

84. *Id.* at 458.

were not, and if the beneficial shareholders were, then complete diversity would have been destroyed.

The Court in *Navarro* was not applying the real party to the controversy test to the entity as a whole.⁸⁵ In fact, the Court distinguished its prior holdings to clarify this point. Citing *Great Southern, Boulogny, and Chapman*, the Court held that “although corporations suing in diversity long have been ‘deemed’ citizens, . . . unincorporated associations remain mere collections of individuals. When the ‘persons composing such association’ sue in their collective name, they are the parties whose citizenship determines the diversity jurisdiction of a federal court.”⁸⁶

The Court further distinguished *Navarro* from the prior cases dealing with unincorporated associations. It noted that the law allowed the trustees to sue either in their individual names or in the trust name.⁸⁷ In *Navarro*, the trustees chose to sue in their own names. Therefore, the Court never needed to reach the question of how to determine the citizenship of the trust as an entity. The real party to the controversy discussion merely affirmed the long held principle that a trustee has a right to sue in his own name, and did not allude to a new basis for determining the citizenship of unincorporated artificial entities.⁸⁸

IV. ANALYSIS OF THE HOLDING

Justice Scalia, writing for the majority, began his inquiry into the controversy presented by *Carden v. Arkoma Associates*⁸⁹ with a discussion of the nature of diversity jurisdiction. He cited the diversity statute and the requirement for complete diversity established by *Strawbridge v. Curtiss*.⁹⁰ To determine whether complete diversity existed in this case, Scalia put forth two questions; first, whether a limited partnership as an entity may be considered a “citizen” of the state that created it, and second, whether a federal

85. *Navarro*, 446 U.S. at 461.

86. *Id.*

87. *Id.* at 465-66.

88. *Carden*, 110 S. Ct. at 1019.

89. *Carden*, 110 S. Ct. 1015.

90. *Id.* at 1017. See *supra* notes 1-4 and accompanying text.

court may look to only the citizenship of the general partner to determine diversity.⁹¹

A. *A Limited Partnership as a "Citizen" in Its Own Right*

Immediately into his opinion, Scalia assaulted the rationale of the dissent.⁹² He concluded that the dissent had arrived at the wrong resolution because it had considered the wrong question.⁹³ Rather than look at Arkoma Associates as an entity with the authority to sue in its own name and then determine the entity's citizenship, the dissent improperly assumed that the citizenship of the entity was the state of origination, and then looked to the question of the citizenship of the "other citizens before the court."⁹⁴

The problem, Scalia properly suggested, was that there were no other parties to the controversy. Had there been, then the proper question would have been which are the real parties to the controversy.⁹⁵ A party who is not a real party to the controversy is properly excluded in the determination of whether complete diversity exists.⁹⁶ However, this case involved only one party as the plaintiff, Arkoma Associates, the limited partnership. Scalia was logically sound in submitting as his question to the Court: How is the citizenship of this entity to be determined?

91. *Id.*

92. *Carden*, 110 S. Ct. at 1017 n.1.

93. *Id.*:

The dissent reaches a conclusion different from ours primarily because it poses, and then answers, an entirely different question . . . That is the central fallacy from which, for the most part, the rest of the dissent's reasoning logically follows. The question presented today is not which of various parties before the Court should be considered for purposes of determining whether there is complete diversity of citizenship, a question that will generally be answered by application of the 'real party to the controversy' test. There are *not*, as the dissent assumes, multiple respondents before the Court, but only *one*: the artificial entity called Arkoma Associates, a limited partnership. And what we must decide is the quite different question of how the citizenship of that single artificial entity is to be determined which in turn raises the question whether it can (like a corporation) assert its own citizenship, or rather is deemed to possess the citizenship of its members, and, if so, which members.

94. 110 S. Ct. at 1023.

95. *McNutt v. Bland*, 43 U.S. (2 How.) 1 (1844) (holding that the citizenship of one who is not a real party in interest to the suit need not be considered in determining diversity).

96. *Id.*

Once he established the focus of the Court's deliberation, Scalia examined the prior holdings in cases discussing the citizenship of an entity. He recognized the long standing distinction between incorporated and unincorporated entities.⁹⁷ Citing *Deveaux*, *Letson*, and *Marshall*, Scalia reiterated the principle that corporations were to be considered citizens of the State of incorporation as well as of the State of the principle place of business.⁹⁸

Moving to unincorporated entities, Scalia reviewed the holdings in *Chapman*, *Great Southern*, and *Bouligny*.⁹⁹ He focused on the Court's reluctance to expand the entity-as-a-citizen rationale from corporations to unincorporated associations.¹⁰⁰ He also distinguished *Russell* in that although the Court did expand the entity-as-a-citizen theory in the case of the *sociedad en comandita*, it did so only in the face of extenuating circumstances and was not purposefully altering the Court's focus.¹⁰¹ To emphasize this, he acknowledged that the argument put forth by Arkoma, that through *Russell* the Court established a willingness to look beyond the unincorporated surface of an entity to the underlying structure in order to determine its citizenship, logically made sense.¹⁰² However, he noted this argument was expressly advanced and rejected in *Bouligny*.¹⁰³

Further, Scalia distinguished *Navarro* on the basis that in that case, the Court considered only the nature of a common law trust and the proper characterization of the trustees as real parties to the controversy.¹⁰⁴ The Court did not express an intention to initiate the practice of looking into unincorporated associations to determine the real parties to the controversy.¹⁰⁵

97. *Carden*, 110 S. Ct. at 1018.

98. *Id.* at 1017-18.

99. *Id.* at 1018.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* See *supra* note 62 and accompanying text.

104. "*Navarro*, in short, has nothing to do with the *Chapman* question . . ." *Carden*, 110 S. Ct. at 1019.

105. "That argument [*Navarro*, by analogy, suggests a willingness of the Court to adjust to business reality] . . . is, to put it mildly, less than compelling." *Id.*

Thus, Scalia held that Arkoma Associates as an entity had the citizenship of each of its members.¹⁰⁶ If one of those members destroyed diversity, diversity was destroyed for the entire entity. The long line of cases holding that the citizenship of an unincorporated entity was the aggregate of the parts was to be followed.

B. *Discriminating Between General and Limited Partners*

The second phase of Scalia's opinion examined whether a court may look to only the general partner when determining the citizenship of the partnership.¹⁰⁷ He found no basis in the law to support such a proposition. "We have never held that an artificial entity, suing or being sued in its own name, can invoke the diversity jurisdiction of the federal courts based upon the citizenship of some but not all of its members."¹⁰⁸ Further, "[t]his approach [to avoid destroying diversity] . . . finds even less support in our precedent than looking to the State of organization (for which one could at least point to *Russell*)."¹⁰⁹

Scalia properly refuted the argument that only the general partner's citizenship was relevant by again reviewing *Chapman*, *Great Southern*, *Bouligny*, and *Russell* to attest to the fact that no element of control, liability, or equivalency has ever factored into or even been mentioned in a decision concerning the citizenship of an entity, incorporated or unincorporated.¹¹⁰ The dissent insisted that in each of the aforementioned cases, the members were equal. Thus, inherent in those decisions to include each member was the notion that had they not been equal, a real party to the controversy test would have been appropriate.¹¹¹ This contention is without merit as Scalia pointed out: "[g]iven what 180 years of cases have said and done, as opposed to what they might have said, it is difficult to

106. "The dissent fails to cite a single case in which the citizenship of an artificial entity . . . has been decided by application of the 'real party to the controversy' test that it describes." *Id.* at 1017.

107. *Carden*, 110 S. Ct. at 1019.

108. *Id.* at 1019-20.

109. *Id.* at 1019.

110. *Id.* at 1020-21.

111. *Id.* at 1024.

understand how the dissent can characterize as ‘newly formulated’ the rule that the Court will, without analysis of the particular entity before it, count every member of an unincorporated association for purposes of diversity jurisdiction.”¹¹²

The majority of the Court, agreeing with Scalia in this analysis, held that it will adhere to the oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of “all the members,”¹¹³ “the several persons composing such associations,”¹¹⁴ and “each of its members.”¹¹⁵

C. *A Deference to Congress*

Scalia conceded that the decision in this case was “technical,” “precedent-bound,” and “unresponsive to the policy considerations raised by the changing realities of business organization.”¹¹⁶ However, he made no apology for this. Rather, he addressed the inappropriateness of the Court to make these policy considerations.

Scalia perceived Congress to be more suited to determine the nature of the various artificial entities and their respective citizenship. “Such accommodation is not only performed more legitimately by Congress than by courts, but it is performed more intelligently by legislation than by interpretation of the statutory word ‘citizen.’”¹¹⁷ He also noted that thirty-five years ago in *Boulogny*, the Court took a similar stance when it concluded that the citizenship of an unincorporated labor union was “properly a matter for legislative consideration which cannot adequately or appropriately be dealt with by this Court.”¹¹⁸

However, Scalia virtually said that he thought allowing an unincorporated entity’s citizenship to be determined by some alternate method might be appropriate. In *Boulogny*, the district court upheld

112. *Id.* at 1021.

113. *Id.* (quoting *Chapman*, 129 U.S. at 682).

114. *Id.* (quoting *Great Southern*, 177 U.S. at 456).

115. *Id.* (quoting *Boulogny*, 382 U.S. at 146).

116. *Carden*, 110 S. Ct. at 1021.

117. *Id.* at 1022.

118. *Id.* (quoting *Boulogny*, 382 U.S. at 147).

removal to federal court because it could divine "no common sense reason for treating an unincorporated national labor union differently from a corporation."¹¹⁹ Scalia recognized that this contention had "considerable merit."¹²⁰ Additionally, Scalia conceded that Arkoma was "undoubtedly correct" that limited partnerships are functionally similar to other organizations that have access to federal courts and was "perhaps correct" that basic fairness and substance over form require that limited partnerships receive similar treatment.¹²¹ Perhaps Congress will take this as a cue to select the unincorporated associations which properly could retain the citizenship of the State of organization in a corporate-like manner.

D. *The Dissenting Opinion*

As Scalia's belief with respect to the proper question before the Court is logically sound, the dissenting opinion, written by Justice O'Connor is largely irrelevant. As outlined above, O'Connor refused to consider the citizenship of the entity but rather proceeded into a lengthy discussion dealing with the "real parties to the controversy."¹²² Though her analysis of law with respect to this question is informative and thorough, it is nonetheless inapplicable to the present case.

O'Connor did, however, put forth several ideas which warrant discussion. In defending the proposition that a limited partnership's citizenship should be determined by only the citizenship of the general partner, O'Connor noted that virtually all of the states have adopted the Uniform Limited Partnership Act which governs the control and management of these partnerships.¹²³ Though this fact does not support her call for the Court to legislate,¹²⁴ the uniformity

119. *Id.* (quoting *Boulogny*, 382 U.S. at 146).

120. *Id.*

121. *Id.*

122. *Carden*, 110 S. Ct. at 1022-23.

123. *Id.* at 1026-27 (citing UNIFORM LIMITED PARTNERSHIP ACT § 26, 6 U.L.A. 614 (1969)).

124. Uniformity among the various states as to the organization of a certain entity has never been a basis in a Court decision to determine the citizenship of the entity. However, the emphasis on the formality of incorporation has been used which would be analogous to the adoption of the UNIFORM LIMITED PARTNERSHIP ACT. See *supra* notes 35-49 and accompanying text.

among the States is a factor for Congress to consider should they initiate discussions to treat limited partnerships more like uniform corporations.

O'Connor also presented the concern that perhaps implicit in the Court's holding was that the failure to consider each member of an unincorporated association would expand diversity jurisdiction at a time when the courts are already seriously overburdened.¹²⁵ She attempted to show the superficial nature of this concern by presenting a way to circumvent it through a class action suit,¹²⁶ though the efficacy of this approach is doubtful.¹²⁷ Regardless, it was not apparent that this was truly a concern of the majority. Scalia's deferral to Congressional action did not indicate a desire to unduly restrict access to federal court. Rather, it was only, as he indicated, a refusal to legislate from the bench. He makes no statement which could be construed to be a concern about overburdened courts and any inference to the contrary would be mere speculation.¹²⁸

V. CONCLUSION

The decision by the United States Supreme Court in *Carden v. Arkoma Associates*¹²⁹ is noteworthy for several reasons. Most importantly, it draws a bright line distinction between incorporated and unincorporated entities at a critical point in the litigation. Had the Court decided to place the burden upon the lower courts to determine who were the real parties in interest for the multitude of unincorporated entities created and yet to be created, chaos and uncertainty would hover over every case until the final appeal on what should be the simple question of jurisdiction. Scalia was correct

125. *Carden*, 110 S. Ct. at 1027.

126. *Id.*

127. See generally *Underwood v. Maloney*, 256 F.2d 334, 337 (3rd Cir.) (a class action is inappropriate when the law of the forum state requires that suit be brought by or against an association as an entity), cert. denied, 358 U.S. 864 (1958). See also *Zahn v. International Paper Co.*, 414 U.S. 291, 297-301 (1973) (stating that even where the applicable state law permits class action by or against unincorporated associations, in a diversity action, the claim of each member of the class must satisfy the jurisdictional amount).

128. O'Connor appeared to realize that this allegation is speculative in that she initiated the discussion with "[t]he concern *perhaps* implicit in the Court's holding today . . ." *Id.* at 1027 (emphasis added).

129. 110 S. Ct. 1015 (1990).

in assuming these are “questions more readily resolved by legislative prescription than by legal reasoning, and questions whose complexity is particularly unwelcome at the threshold state of determining whether a court has jurisdiction.”¹³⁰

The effects of *Carden* can be seen already in the few months since the decision was issued.¹³¹ One can expect the decision to be somewhat broader than its specific holding. Scalia’s thorough discussion as to the nature of an unincorporated entity leaves the impression that this decision will govern the citizenship of most all unincorporated entities and not be restricted to limited partnerships as the holding might suggest.

Finally, Scalia’s appreciation for the subtle distinguishing points between the prior holdings of the Court and his logical consistency throughout the opinion undoubtedly render this case invaluable for determining diversity jurisdiction among artificial entities. Scalia left no stone unturned in supporting his rationale with judicial precedent. Eventually Congress may, and probably should, act to provide a method of determining citizenship which would take into account business realities. However, until that time, *Carden* furnishes a sound and workable resolution.

Joseph J. Buch

130. *Id.* at 1022.

131. Several cases have cited *Carden* as the basis for dismissal. See *McMoran Oil & Gas Co. v. KN Energy, Inc.*, 907 F.2d 1022 (10th Cir. 1990) (dismissing the action for lack of subject matter based upon diversity jurisdiction in a case involving a limited partnership); *RLI Inc. Co. v. U.S. Aviation Underwriters, Inc.*, 739 F. Supp. 1219 (N.D. Ill. 1990) (dismissing the action for incomplete diversity in a case involving an insurance group construed as a partnership); *Goldberg & Assoc. v. Collins, Tuttle & Co.*, 739 F. Supp. 426 (N.D. Ill. 1990).