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Lloyd's of London and Diversity Jurisdiction: Analyzing the Citizenship of a Unique Organization

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Notes and Comments

Lloyd's of London and Diversity Jurisdiction: Analyzing the Citizenship of a Unique Organization

The rules for diversity jurisdiction are straightforward. The difficulty arises in applying them to Lloyd's of London—that venerable institution shrouded in the corporate vagaries of British law.

—Circuit Judge James L. Ryan[1]

INTRODUCTION

To bring a claim in federal court under 28 U.S.C. § 1332,[2] each plaintiff must prove that he or she is a citizen of a state different from each defendant.[3] Over the years courts have grappled with

1. Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 41 (6th Cir. 1994).

2. 28 U.S.C. section 1332 outlines the requirements for a district court to properly procure original jurisdiction based upon diversity of citizenship. *See* 28 U.S.C. § 1332 (1994 & Supp. III 1997). In part, 28 U.S.C. § 1332 provides:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between-
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> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state; . . .
>
> (c) . . . (1) 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, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; . . . .

Id.

3. Federal courts have been conferred the power to decide disputes arising under state laws on the basis that the parties are citizens of different states. *See*

the issue of how to define Lloyd's of London's ("Lloyd's") citizenship status with respect to diversity jurisdiction. Specifically, courts are uncertain as to whether each member's citizenship[4] should be considered or only that of the lead, representative member of the syndicate group.[5] Lloyd's access to the federal court system, under a guise of either a corporate entity or an unincorporated association, depends upon how various federal courts interpret Lloyd's organization. Similarly, each court's decision effects how our founding fathers' envisioned diversity jurisdiction.

It is not clear whether Lloyd's meets the Federal Code requirement of complete diversity. Moreover, it is equivocal whether Lloyd's is to be considered as either an incorporated or unincorporated association. Lloyd's appears to be a corporation since it is made up of individuals who belong to membership groups.[6] These groups, called syndicates, are members of Lloyd's. Essentially, the syndicate groups conduct their own business without any liability

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id. The power of the federal judiciary to adjudicate "Controversies between two or more . . . Citizens of different States" is derived from Article III, Section 2 of the United States Constitution. U.S. Const. art. III, § 2, cl.1. Today, the power is statutorily embodied in 28 U.S.C. § 1332, which explains that federal courts procure jurisdiction over diversity of citizenship cases. That is, cases where there is *complete* diversity in that each defendant is a citizen of a different state than each plaintiff. *See* John McCormack, Comment, Carden v. Arkoma Associates*: The Citizenship of Limited Partnerships, Associations, and Juridical Entities—A Chilling Future for Federal Diversity Jurisdiction*, 27 New Eng. L. Rev. 505, 506 nn.1-3, 5, 6 and accompanying text (1992) (describing some of the history behind the common law acceptance of the citizenship characterizations of unincorporated associations).

4. *See infra* part I.B.1-3, 5 (explaining the membership of Lloyd's and the compilation of different individuals).

5. *See infra* part I.B.5 (describing that the lead, representative member is officially termed an underwriter and acts as an agent for all members of the group that he represents). The "lead representative" is the underwriting agent who represents the interests of the entire syndicate group. *See* Eileen M. Dacey, *The Structure of the Lloyd's Market*, 555 PLI/Comm 33, 49 (1990) (explaining the primary responsibility of the lead underwriter). The group is comprised of "all of the members represented" which are individuals or corporations. *Id.* at 37.

6. It would appear to an uninformed outsider that Lloyd's conducts business as a corporation, considering each syndicate group is usually referred to as Lloyd's. Furthermore, the individual members of Lloyd's have no power to conduct business on their own behalves and must rely on Lloyd's to conduct business for them. *See* Gary L. Lockwood, *Lloyd's of London: A Primer*, 750 PLI/ Comm 7, 30-41 (1997) (describing the roles of different individuals and particularly emphasizing that a Name is not allowed to write a risk by herself and therefore must be a member of a syndicate represented by an underwriter).

to the "Lloyd's entity."[7] Comparatively, Lloyd's also resembles an unincorporated association because it conducts business similar to a partnership.[8] As stated by a prominent underwriter,[9] an appropriate way to describe Lloyd's of London is that "[i]ndividually we are underwriters. Collectively we are Lloyd's."[10] These words correctly characterize Lloyd's, not as an insurance company, but as a marketplace for those seeking insurance and for those willing to invest a risk in other's property.[11] As a result, Lloyd's has been assessed citizenship as both an unincorporated association and a corporation amongst two different federal circuit courts.[12]

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7. *See* Adam Raphael, Ultimate Risk: The Inside Story of the Lloyd's Catastrophe 42 (1995) (stating that "[e]ach Name trades on his own account with unlimited personal liability. That means that he is responsible *only* for his own share of losses or profits, not for those of any other member of the syndicate") (emphasis added). The syndicates are responsible for their own affairs and subscribe to the policies, or risks, they choose, almost as an individual corporation, because the underwriting agent for the syndicate binds all of the members to certain insurance risks. *See* Dacey, *supra* note 5, at 49 (1990). The underwriting agent is also responsible for following the by-laws of Lloyd's (which are similar to the by-laws of a corporation). *See id.* The syndicate group is managed by a managing agent. *See id.* at 44; *see also infra* part I.B.2 (explicating a syndicate). However, unlike a corporation, each member of the syndicate is exposed to unlimited liability. *See id.* at 35, 36.

8. *See* Great S. Fire Proof Hotel Co. v. Jones, 177 U.S. 449 (1900) (denoting that a partnership is to be defined as an unincorporated association for citizenship purposes). *See also infra* part II.B.3 (describing what defines an entity as an unincorporated association and demonstrating the various entities which have been historically defined as "unincorporated associations").

9. *See* Dacey, *supra* note 5, at 35 n.2 (1990) (attributing the comment to "Walter Farrant, a 19th Century Caller of the Room," [a Caller is one who would announce the names of the brokers] (citing Raymond Flower & Michael Wynn Jones, Lloyd's of London: An Illustrated History 105 (1974)); *see also* Antony Brown, Cuthbert Heath: Maker of the Modern Lloyd's of London 50 (1980) [hereinafter Cuthbert Heath] (acknowledging the quote, but failing to attribute it to anyone in particular by merely saying, "A Lloyd's man once said").

10. Brown, Cuthbert Heath, *supra* note 9, at 50; Antony Brown, Lloyd's of London 5 (1974) [hereinafter Lloyd's of London]; Dacey, *supra* note 5, at 55. Specifically, this statement sums up the Lloyd's organization because individually the underwriters insure policies. However, collectively every member of Lloyd's provides a support system and network for each other. For an example, see Brown, Lloyd's of London, at 43 (describing a situation in 1906 where one of the underwriters was unable to pay his debts and thus his debts were charged to every member of Lloyd's in proportion to the premiums that they wrote).

11. *See* Theodore A. Boundas et al., *Lloyd's and the London Market: Overview and Recent Developments* 766 PLI/ Comm 7 (1998) (discussing the general principle that Lloyd's is a marketplace for insurance).

12. For example, the Sixth Circuit holds that the lead underwriter acts as an agent for undisclosed principals, thus finding that it is proper to only look at the

This uncertainty is illustrated by the split amongst the Sixth and Seventh Circuit courts.[13] The issue has also been directly addressed, with rather consistent conclusions, by a few federal district courts.[14] The determination of Lloyd's citizenship is a recent dilemma for the federal courts because in previous cases, the significance of the Names' citizenship was not an issue. In these earlier actions, it appeared that "none of the names in the syndicates that underwrote the policy had the same citizenship as an insured, so the question could not have arisen."[15] Thus, past courts had no reason to determine if a Lloyd's syndicate should be defined as a

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citizenship of the agent. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39 (6th Cir. 1994). In contrast, the Seventh Circuit holds that a partnership type arrangement exists, and thus it is proper to look at the citizenship of all the members which comprise the group as a traditional, unincorporated association model. *See* Indiana Gas Co., Inc. v. Home Ins. Co., 141 F.3d 314 (7th Cir. 1998).

13. Only the Sixth and Seventh Circuits have had an opportunity to directly address the determination of citizenship. *Compare* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314 (7th Cir. 1998) (finding that a Lloyd's of London insurance syndicate takes on the citizenship of each of its individual subscribing members) *with* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39 (6th Cir. 1994), *cert. denied,* 119 S. Ct. 339 (1998) (holding that the syndicate group takes on the citizenship of only the agent representative).

14. *See* Bath Iron Works Corp. v. Certain Member Companies of the Institute of London Underwriters, 870 F. Supp. 3 (D. Me. 1994) (finding that the potential for liability should be the key in determining if a party is a real party in interest); Humm v. Lombard World Trade, Inc., 916 F. Supp. 291 (S.D.N.Y. 1996) (holding that all members of the syndicate group had to be considered for diversity jurisdiction purposes); *see also* Bell & Assocs. v. Lloyd's Underwriters, No. 92 Civ. 5249, 1998 WL 274346 (S.D.N.Y. May 26, 1998) (holding that the Lloyd's syndicate group is a citizen of each state where each Name is a citizen); Chase Manhattan Bank v. Aldridge, 906 F. Supp. 870 (S.D.N.Y. 1995) (holding that the syndicate is a citizen of the state or states where each investor (Name) is a citizen); Lowsley-Williams v. North River Ins. Co., 884 F. Supp. 166 (D.N.J. 1995) (finding that since the parties stipulated that the Names were personally liable on the policies, they were real parties in interest); Transamerica Corp. v. Reliance Ins. Co., 884 F. Supp. 133 (D. Del. 1995) (finding that syndicates are citizens of each state as all of the Names because the distinction between the active underwriters and Names is unnecessary).

15. *Indiana Gas Co.*, 141 F.3d at 319; *see, e.g.*, Certain Underwriters of Lloyd's, London, Eng. v. General Accident Ins. Co., 909 F.2d 228 (7th Cir. 1990); Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 119 & n.29 (1984); United States v. L.A. Tucker Truck Lines, Inc., 344 U.S. 33, 37-38 & n.9 (1952); R.R. Donnelley & Sons Co. v. FTC, 931 F.2d 430, 433 (7th Cir. 1991); Webster v. Fall, 266 U.S. 507, 511 (1925). Each of the cases is cited because each involved litigation by or against a Lloyd's syndicate in a section 1332 action, yet there was no reason to discuss the dilemma of diversity of citizenship.

corporation or an unincorporated association.[16] However, due to the presence of parties with potentially the same citizenship, courts have been restricted to ascertaining whether or not the federal court is a proper forum prior to determining the substantive issues.

Determining the citizenship of such a unique organization is difficult for the courts because of contradicting policy issues ranging from a general reluctance to broaden diversity jurisdiction by judicial definition,[17] balanced against the need for associations to have access to the federal courts.[18] A corporation's citizenship is defined as that of the state of incorporation and the state in which it maintains its principal place of business.[19] In contrast, courts determine the citizenship of unincorporated associations[20] by assessing the citizenship of each of its members because an unincorporated association is not a legal, fictional entity like a corporation.[21] It is important for courts to decide whether Lloyd's gains access to the federal courts under the characterization of a corporation or an unincorporated association because it will set the precedent on how to define future, complex organizations that force the same issue.

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16. *See* cases cited *supra* note 15.

17. *See Indiana Gas Co.*, 141 F.3d at 318.

18. The Supreme Court determined that a corporation should have the ability to sue and be sued and thus could be deemed a citizen of the state in which it was chartered. This 1844 decision in *Louisville, Cincinnati & Charleston R.R. Co. v. Letson*, 43 U.S. (2 How.) 497 (1844), overruled the court's earlier decision in Bank of the *United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), not to confer upon a corporation a citizenship status on the basis that "[t]he increased use of the corporate form as a means of doing business and the desire of corporations to resort to the federal courts proved inexorable." Charles A. Wright et al., Federal Practice and Procedure § 3623, at 590 (2d ed. 1984).

19. *See* 28 U.S.C. § 1332 (c)(1) (1994 & Supp. III 1997). *See* 28 U.S.C. § 1332, *supra* note 2, for the language of sub-section (c)(1).

20. Unincorporated associations include virtually any other entity that is not deemed a corporation, such as labor unions, limited and general partnerships and charitable organizations. *See infra* part II.B.3 (describing unincorporated associations and the pertinent citizenship status).

21. *See* Wright et al., *supra* note 18, § 3630, at 682 (citing United Steelworkers of America v. R.H. Bouligny, Inc., 382 U.S. 145 (1965); Puerto Rico v. Russell & Co., 288 U.S. 476 (1933); Chapman v. Barney, 129 U.S. 677 (1889)) (highlighting these as the primary cases which established the basic rule for determining the citizenship of unincorporated associations); *see also infra* part II.B.1-3 (highlighting the history of diversity jurisdiction and pointing out the different treatment for a corporation versus an unincorporated association).

This Comment analyzes the current methods of establishing citizenship for Lloyd's and proposes a solution that will provide some consistency in analyzing and determining the citizenship of future, complex organizations. Part I provides the history and general structure of Lloyd's of London. Part II furnishes an overview and explanation of diversity jurisdiction. Specifically, this section examines the parameters of diversity jurisdiction and the manner in which it has been modified over the years. Part III sets forth key judicial decisions which highlight the current circuit split regarding Lloyd's of London and diversity jurisdiction. Part IV discusses the primary analysis adopted by the courts and focuses on the courts' application of an agency theory. This section also discusses whether Lloyd's constitutes a traditional unincorporated association for diversity purposes by evaluating which parties are the appropriate real parties in interest. Specifically, this section further addresses whether each member of the syndicate group constitutes a real party or whether only the agent of the syndicate is a real party. Thereafter, the section applies the diversity jurisdiction rationale to the Lloyd's organization. Finally, this Comment concludes by arguing that since an agency relationship exists within the Lloyd's syndicate between the underwriter and all of the Names, for purposes of diversity jurisdiction Lloyd's should be analyzed according to the common law tradition of unincorporated associations.

I. THE STRUCTURE OF LLOYD'S

Due to the intricate composition of Lloyd's of London,[22] courts have been unable to definitively determine its proper citizenship for purposes of federal diversity jurisdiction. Lloyd's of London is characterized as a unique organization[23] because it is the only organization of its kind. Its structure confuses the courts since Lloyd's is associated with insurance, yet it is not an insurance company and therefore cannot be categorized as such for diversity pur-

22. *See infra* part I.B.-C. (discussing the different roles within Lloyd's and demonstrating that Lloyd's is intricate because it is not a traditional corporation, unincorporated association or insurance company).

23. Lloyd's is often deemed a unique organization because it is organized similar to a partnership arrangement, although it considers itself to be a corporation.

poses.[24] Rather, Lloyd's portrays itself as a market place for investor-underwriters and those seeking insurance.[25] Lloyd's is termed a market place because brokers—those looking for insurance for their clients—use Lloyd's to "shop" for insurance.[26]

Individuals known as underwriters are the ultimate insurers of the insurance policies.[27] These underwriters represent the interests of all the members[28] by way of syndicate groups. The syndicates provide virtually any kind of insurance imaginable to just about anyone who is interested.[29] Members of the syndicate groups are individual or corporate members who provide all of the funds to "insure" a particular object, concept or person.[30] As a result, these underwriters and syndicate groups together make up the organization known as "Lloyd's of London."

In order to fully appreciate the composition, tradition and unique character of Lloyd's, it is vital to understand its history. Furthermore, it is essential to recognize the extent of responsibility commanded by each position and how each role functions as a part of the whole. The key players are referred to as the Names, member agents, syndicates, managing agents, underwriting agent, following underwriters, the broker and the insured. The following

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24. Although the terms "insurance" and "Lloyd's of London" go hand in hand, Lloyd's does not hold itself out as an insurance company. *See* Lockwood, *supra* note 6, at 11 (stating that "[f]or over 300 years, the name of Lloyd's of London has been synonymous with insurance").

25. For a general synopsis of Lloyd's and the recurring theme that Lloyd's consists of a marketplace for insurance, see Boundas et al., *supra* note 11, at 9; Lockwood, *supra* note 6, at 11.

26. *See* Lockwood, *supra* note 6, at 42-43 (describing the broker's obligation to his client and explaining how the broker uses Lloyd's to subscribe a risk).

27. *See* Dacey, *supra* note 5, at 48, 49.

28. *See* Lockwood, *supra* note 6, at 39-41 (explaining the role of the lead underwriter); Dacey, *supra* note 5, at 48-49 (describing the responsibilities of the active underwriter).

29. For example, Lloyd's insure's specialty risks such as "the on-schedule opening of the 1964 New York World's Fair; Khrushchev's safety on his 1959 visit to the United States; Elizabeth Taylor's illness in the filming of 'Cleopatra' . . . ; Marlene Dietrich's legs and Jimmy Durante's nose against accidental injury; space missile launchings; and a wide variety of unique risks." David L. Bickelhaupt & John H. Magee, General Insurance 89 (Davis W. Gregg consulting ed., 8th ed. 1970); *see also* Flower & Jones, *supra* note 9, at 161-64 (describing unusual insurance that Lloyd's has issued).

30. *See Lloyd's: Business Information: How the Market Works* (visited Oct. 11, 1998) <http://www.lloydsoflondon.co.uk/businfo/hmw/glossary.htm> (describing who can be a Name); Lockwood, *supra* note 6, at 30 (explaining, similarly, who can be a Name and the conditions placed upon them).

discussion of Lloyd's rich history provides a better familiarization with each individual position.

A. *The Origins of Lloyd's*

Lloyd's has an abundant history dating back to the 1600s.[31] In seventeenth century England, businessmen conducted their business in coffee houses.[32] One coffee house in particular—the coffee house of Edward Lloyd—was a renowned place for those interested in marine insurance.[33] Lloyd himself, like the modern Lloyd's Corporation today,[34] was not involved in the activities of his customers.[35] Rather, he catered to his customers' desires to partake in an "insurance" industry which revolved around the shipping and cargo industry by providing a place and the tools to conduct business.[36]

As Lloyd's expanded over the years, it moved into more suitable business space.[37] Although Lloyd's has moved to a bigger

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31. For a detailed and informative overview of the history of Lloyd's, see Brown, Lloyd's of London, *supra* note 10; Lockwood, *supra* note 6.

32. The first coffee house was opened in Cornhill, England in 1652 by a man named Pasqua Rosee. Coffee houses developed around England and became hot spots for conducting business as a result of their private, comfortable and convenient locales, as compared to the pre-existing taverns and inns. *See* Brown, Lloyd's of London, *supra* note 10, at 14-33 (describing the rise of coffee houses, especially that of Edward Lloyd, and how they operated as central locales in which to conduct business); *see also* Brown, Cuthbert Heath, *supra* note 9, at 56.

33. *See* Lockwood, *supra* note 6, at 15, 16 (stating that "[w]hile it is *assumed* that Edward Lloyd's Coffee House in Tower Street was a place where the underwriting of marine risks was accomplished, no documentary proof of that has been uncovered") (emphasis added) (citing Brown & Wormell, An Introduction to Working in the Lloyd's Market 9 (1987)).

34. The Lloyd's Corporation entity is not involved in the activities of its customers because this is the job of the underwriters and syndicates. *See infra* part I.C. (describing the role of the Lloyd's Corporation). Thus, the Lloyd's Corporation merely sees to general management issues and basically provides and maintains the place so that the business of insurance may be conducted. *See id.*

35. *See supra* note 30.

36. *See* Brown, Cuthbert Heath, *supra* note 9, at 57; Lockwood, *supra* note 6, at 16, 17. Lloyd conducted his business by providing his customers not only with a place to obtain insurance, but also with details about the arrivals, losses and sales of ships. *See id.* Lloyd died in 1713, but his coffee house continued to thrive as his wealthy individual "customers" carried on the business of marine insurance. *See id.* at 18; Brown, Lloyd's of London, *supra* note 10, at 16.

37. Lloyd's initially moved from Edward Lloyd's coffee house on Tower Street in the city of London in 1688 to Lombard Street in 1691. In 1774 it obtained a new premise in Cornhill called the Royal Exchange. In 1928 it moved to a building on Leadenhall Street. Finally in 1958, it relocated to the Lime Street headquarters,

building in a more prominent location of town, it still conducts business in one big "room."[38] "Why, might you ask, should Lloyd's cling to this archaic custom? The point is that now, as in the 1760s, Lloyd's is not an insurance office but a market—the only place in the world where you can find so many potential insurers in one room."[39] For this reason, Lloyd's continues to conduct business in a manner which illustrates it's origin.[40]

The expansion of Lloyd's to the American market occurred around the 1890s.[41] Lloyd's decided to venture beyond the confines of its strictly marine policies in order to conquer the prospering American market.[42] Currently, over half of Lloyd's business comes from the United States.[43]

Notwithstanding the numerous facial changes during its rich history, the basic purpose and structure of Lloyd's has remained

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where the market operates today. For a more illustrative time line of events, see *Lloyd's: Key Dates: Lloyd's in the USA* (visited Oct. 11, 1998) <http://www.lloydsoflondon.co.uk/lloydsusa>; Brown, Lloyd's of London, *supra* note 10.

38. *See* Brown, Lloyd's of London, *supra* note 10, at 4.

39. *Id.*

40. For instance, messengers are still called waiters and insurance risks are placed at the underwriter's box in the Room. The terms "box" and "room" signify the division of pews or benches used in the coffee house which was generally one large room. *See id.*

41. *See id.* at 68. In 1906, the American market was quickly impressed with Lloyd's following a mass of insurance claims from a San Francisco earthquake which destroyed approximately 30,000 houses and 500 city blocks. *See id.* at 69. Lloyd's did not disappoint the insured; the respective underwriters collectively paid the $100,000,000 guaranteed on the insurance risk. *See id.* at 68-69. The houses and buildings that were destroyed were a result of the earthquake and fires which were a ramification of the earthquakes. This was a notable event because many of the insurance companies were repudiating their liability if the fires connected to the earthquake at all. Lloyd's, however, did not. *See id.* at 69. "It was, one might say, the moment of truth. Lloyd's had not merely survived it, but created a new and massive goodwill for the future." *Id.*

42. Towards the end of the 1800's, Lloyd's took on the underwriting of its first non-marine policy. *See* Brown, Lloyd's of London, *supra* note 10, at 66-68. Currently it underwrites five main classes of business: marine, non-marine, aviation, motor and term-life. *See supra* note 30; Brown, Lloyd's of London, *supra* note 10, at 66-68 (describing the initial exploration into a non-marine market); Brown, Cuthbert Heath, *supra* note 9, at 68-95 (explaining the exploration into a non-marine market and some history regarding the man attributed with that venture).

43. *See supra* note 37. Premiums in the form of United States dollars, as opposed to English pounds, are kept in the American Trust Fund in New York. *See id.* In 1998, the fund was at a level of about ten billion dollars. *See id.*

intact.[44] As a result, it is still said "that now, as in the 1760's, Lloyd's is not an insurance office but a market . . . ."[45] But, in order to better understand Lloyd's, it is important to grasp the roles and responsibilities of the key players.

B. *Significant Terms*

Primarily, Lloyd's is unique because of its organizational structure. Within this structure there are several significant positions which form a part of Lloyd's. In determining its citizenship, courts have been particularly attentive to the extent to which each member, in her respective capacity, contributes to and is responsible for Lloyd's business. Accordingly, this section explores the requirements, obligations and duties of the Names, underwriters, syndicate groups, managing agent, broker and lead underwriters.

1. *Names*

The Names are responsible for contributing all of the funding to the syndicate.[46] This financial backing enables the syndicate to take the risks it chooses.[47] A Name may either be a corporation[48] or an individual.[49] Lloyd's requires each Name to pay an entrance

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44. *See supra* notes 37-43 and accompanying text (referring to the physical location changes, the official entry into an insurance market and the progression into non-marine markets).

45. Brown, Lloyd's of London, *supra* note 10, at 4.

46. *See id.* at 34-62 (explaining the concept of unlimited liability to which all Names are subject); Dacey, *supra* note 7, at 35, 36 (noting that each member is individually liable "in theory down to the last penny for losses."); Lockwood, *supra* note 6, at 30 (explaining that "[t]he Names . . . are the ultimate risk takers").

47. *See* Lockwood, *supra* note 6, at 30; *supra* note 30; *see also* Brown, Lloyd's of London, *supra* note 10, at 40 (describing that the amount of business an underwriter may underwrite is corollary to the amount of funds that the Names provide).

48. The first corporate members were admitted in 1994 and unlike individual members, they trade with limited liability. In 1998, there were 435 members who provided limited liability funds. This constituted 60% of the market. *See Lloyd's: Business Information: Key Facts: Fact Sheets* (visited Oct. 11, 1998) <http://www.lloyd.com/businfo/keyfacts/factsheets/membership.htm>.

49. The individual members consist of men and women. Women were initially welcomed as Names in 1969. There were 6,825 individual members in 1998, which constituted forty percent of the market. *See id. See also* Flower & Jones, *supra* note 9, at 186 (providing a time line of important dates in the history of Lloyd's).

fee,[50] which is comprised of thirty-two and a half percent to fifty percent[51] of the Name's premium underwriting limit.[52]

To become a Name, one must subscribe to rigid membership prerequisites. First, although "membership of Lloyd's is by no means an upper-class preserve,"[53] a minimum level of capital is required to become a Name.[54] Second, Names must apply and simultaneously be sponsored by two current members.[55] Third, a mean's test is conducted to assess the candidate's financial situation.[56] Under the mean's test, a prospective member must demonstrate to the committee of Lloyd's that he possesses the necessary capital—the means—to be a member.[57] Lloyd's currently requires each individual member to show a minimum level of personal wealth of £250,000 ($412,500).[58]

Provided that the candidate satisfies the requirements of the mean's test, the candidate is then asked to come before the Rota Committee[59] for an interview. Upon successful completion of the interview, the candidate's application and all other pertinent information is circulated for a vote.[60] Lloyd's grants admission contin-

50. Considering each Name has unlimited liability, an entrance fee (deposit) is required to ensure that a member cannot be deemed insolvent. *See* Brown, Lloyd's of London, *supra* note 10, at 38-40.

51. *See supra* note 48 (noting that the individual will be required to deposit thirty-five percent in 1999 and forty percent in 2000).

52. *See* Brown, Lloyd's of London, *supra* note 10, at 39-40 (explaining that an underwriter only has the capacity to subscribe to risks in accordance with the capital provided by his Names. Thus, an underwriter would not be allowed to underwrite a risk for one million dollars if the syndicate only had $500,000 of capital). Therefore, an underwriter's "premium underwriting limit" could constantly fluctuate according to the financial situation of the syndicate. *See id.*

53. *See id.* at 54.

54. *See id.* at 48.

55. *See* Lockwood, *supra* note 6, at 30.

56. *See* Brown, Lloyd's of London, *supra* note 10, at 47, 48; Lockwood, *supra* note 6, at 31.

57. *See* Brown, Lloyd's of London, *supra* note 10, at 48.

58. *See supra* note 48. This amount will be increased over time to £350,000 ($577,500) in 2002. *See id.*

59. *See* Brown, Lloyd's of London, *supra* note 10, at 34. "The object of the Rota Committee is to make a final check on the credential of anyone who is applying to join a syndicate." *Id.* The Rota Committee is comprised of three or four members of the Lloyd's Council. *See* Raphael, *supra* note 7, at 38. One author, Adam Raphael, characterizes the interview before the Rota Committee as "nothing more than an empty ceremony" where the name was asked "if he appreciated the risk of unlimited liability that he was undertaking." *Id.*

60. *See* Lockwood, *supra* note 6, at 31.

gent upon unanimous support.[61] Therefore, if all voting members support the application, then admission is granted.

These strict membership conditions are necessary to uphold the tradition of Lloyd's,[62] as well as to assure that those interested in membership have the capital to which they attest.[63] The capital requirement is crucial in light of the unlimited liability of Lloyd's members.[64] Once accorded the Name status, a yearly solvency test (an audit) is conducted to assure that the Name has maintained sufficient assets.[65]

A Name is initially represented by a member agent[66] who aids the Name in choosing syndicates and looks after the Name's interests.[67] As will be explained later, Names' interests are represented by agents called underwriters. Names, therefore, have neither the power nor the authority to underwrite insurance risks

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61. *See id.* (citing Lloyd's Training Centre, An Introduction to Lloyd's Market Procedures and Practices 41 (1987)).

62. Strict membership prerequisites uphold Lloyd's tradition to set high standards for its members to assure that the syndicates will pay, if possible, on the claims it underwrites so that one member cannot entirely separate himself from liability as a result of being declared insolvent. *See generally* Brown, Lloyd's of London, *supra* note 10, at 34-62 (explaining the concept of unlimited liability and describing, in part, the traditional reasons for Lloyd's manner of conducting business today).

63. The "tradition" refers to the high quality of work and guarantee that Lloyd's is known for as well as it's reputation in regards to the risks it underwrites and the subsequent claims it pays. *See id.*

64. *See id.* at 34-62 (explaining that unlimited liability within Lloyd's refers to the underwriter's obligation to pay on his losses. As a result, if an underwriter incurs a loss, each Name comprising the syndicate is obligated to pay what she subscribes and beyond if the syndicate still cannot meet it's obligation under the claim).

65. The yearly solvency test is performed by an independent auditor. *See* Lockwood, *supra* note 6, at 33. An audit is used to detect the strength of the financial structure of a syndicate. *See id.* The audit is essential because each member subscribes under a policy of unlimited liability. Therefore, the test assures that members are maintaining the requisite minimum level of wealth. *See* Brown, Lloyd's of London, *supra* note 10, at 40-41 (describing the inception of the audit system in 1909).

66. *See* Lockwood, *supra* note 6, at 35 (explaining that "[a] Member's Agent is an organization picked by a Name to control the Name's affairs as they relate to business conducted at Lloyd's"); *see also supra* note 30 (explaining that a Member's Agent *only* advises individual Names and that corporate Names are guided by "licensed Lloyd's advisers").

67. *See* Lockwood, *supra* note 6, at 35 (explaining that the Member's Agents are responsible for overseeing every aspect of the Name's duties and choices; from guiding the Name through his or her annual insolvency test to advising them which syndicates to join).

on their own. Names, with the exception of the actual underwriter, are not involved in the actual business of writing the policies or paying the claims. However, their personal wealth is what secures the policy.[68]

2. *The Syndicate*

Subsequent to becoming a Name, the Name must subscribe to one or a number of syndicates.[69] The syndicate—a group of Names which subscribe to a certain risk—ensures that an insurance risk can be absorbed by an entire group rather than a select few.[70] In 1999, one hundred and thirty-nine syndicates existed.[71] The syndicate is governed by a managing agent who oversees the syndicate's general business by keeping its books and paying claims.[72] Additionally, the syndicate is linked to each Name by way of the member agent, who advises the individual Names of their commitments.[73]

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68. Individual, unlimited liability is the concept behind Lloyd's syndicates. *See supra* notes 46-48 and accompanying text, which explain the requirements to become a Name and how the capital provided for by the Names establishes the syndicate's overall subscription level. *See* Brown, Lloyd's of London, *supra* note 10, at 34-62 (explaining the concept of the Names' unlimited liability); Dacey, *supra* note 7, at 35, 36 (noting that each member is individually liable "in theory down to the last penny for losses"); Lockwood, *supra* note 6, at 30 (explaining that "[t]he Names . . . are the ultimate risk takers").

69. *See* Lockwood, *supra* note 6, at 34.

70. *See* Dacey, *supra* note 7, at 37 (describing the establishment of syndicates and noting that "[t]he first 'big' syndicate was formed in the 1870's by F.W. Marten").

71. *See Lloyd's: Directory: Governance* (visited Aug. 31, 1999) <http://www.lloydsoflondon.co.uk/directory/underwriters/body.htm>.

72. *See id.* In 1999 there were sixty-three managing agents operating in the Lloyd's market. *See id.* The Managing Agent takes care of all of the tasks of running a syndicate. *See id. See also* Lockwood, *supra* note 6, at 36-38 (describing that one of the key functions of a managing agent is to appoint an active underwriter to underwrite on behalf of the syndicate); Dacey, *supra* note 7, at 44-46 (describing that some of the other tasks of the managing agent are to invest the syndicates premium, appoint the active underwriter, pay claims, maintain all of the associated accounting and generally manage the syndicate).

73. *See supra* note 30.

3. *Underwriters*

Underwriters, who are usually professional underwriters,[74] are appointed by the managing agent.[75] An underwriter acts as an agent for the Names by underwriting a policy on behalf of all of the Names belonging to a specific syndicate.[76] Underwriters have a blanket consent by the syndicate group to act in its best interests and thus to enter into "contracts" (insurance risks) on its behalf.[77]

It is not a requirement that the professional underwriter be a Name.[78] The role of the underwriter, therefore, is that of an employee of the managing agent.[79] The underwriter is the actual insurer because he is also responsible for the unlimited liability of the syndicate's losses, has the full power to bind all of the Names and may bring litigation on their behalf.[80] Therefore, the underwriter, not the Lloyd's Corporation, is deemed the insurer.[81] As will be explained, the Lloyd's Corporation simply provides the market place and the means for people to come together to conduct the business of insurance.[82]

4. *Brokers*

The broker acts as the link between the insured and the underwriter.[83] A broker's primary responsibility is to represent Lloyd's customers. A broker is a necessary participant because Lloyd's will not contract with insurance companies or individuals directly.[84] Lloyd's requires that a risk[85] be placed by an accredited

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74. *See id.* (noting that the underwriter is a professional because of her specific expertise of the syndicate group's primary risks. The market, therefore, depends upon these people).

75. *See* Lockwood, *supra* note 6, at 38, 39.

76. *See supra* note 30

77. *See* Dacey, *supra* note 7, at 48, 49 (explaining that the primary responsibility of the active underwriter is to represent the syndicate members); *see also* Lockwood, *supra* note 6, at 34, 40-41 (describing the relationship between the Name and underwriter within the syndicate and noting that a single risk is generally shared amongst many syndicates).

78. *See* Lockwood, *supra* note 6, at 38.

79. *See id.*

80. *See* Dacey, *supra* note 7, at 48, 49.

81. *See id.* at 49, 50.

82. *See infra* part I.C. (explaining the inception and role of the Lloyd's Corporation).

83. *See* Lockwood, *supra* note 6, at 42.

84. *See id.* at 41.

brokerage firm.[86] Currently, there are more than 200 firms registered as Lloyd's brokers.[87] They range in size from small specialist companies to large multinational groups.[88] The broker's responsibility is to place risks wherever she deems appropriate, either at Lloyd's or elsewhere.[89] The broker has an obligation to prepare a slip—which represents the precise risk to be insured—for the policy holder and present it to the underwriter.[90] A broker who is attempting to insure a policy through Lloyd's may often find that it is not possible to have the risk subscribed to by only one group of syndicates.[91] In fact, "[a] typical policy will be placed with about twenty underwriters who will each write a small percentage of the risk."[92] As a result, the broker may have to go to numerous syndicates within Lloyd's, or even solicit to insurance companies outside of Lloyd's, in order to have his risk insured one hundred percent.[93] Consequently, if there is more than one syndicate subscribing to a particular policy, then the underwriters on that policy are organized as the leading underwriter and a series of following underwriters.[94]

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85. *See* Facing the Future's Risks (Lyman Bryson ed., 1953), *reprinted in* Risk and Insurance 1, 1-18 (Ralph H. Blanchard ed., 1965) (explaining that insurance originated because individuals and organizations were unwilling to bear the risk of loss. Therefore they paid others to take the risks. A risk is an uncertainty of the future in which a chance is taken).

86. *See* Lockwood, *supra* note 6, at 41.

87. *See supra* note 30.

88. *See id.*

89. *See* Lockwood, *supra* note 6, at 42. It may be impossible or impractical for the Broker to have his risk 100% subscribed at Lloyd's and thus may find it necessary to venture outside of the house of Lloyd's for additional insurance.

90. *See* Raphael, *supra* note 7, at 42.

91. This is the reason for a system of a lead underwriter and following underwriters as explained in Section I.B.5. *See* Lockwood, *supra* note 6, at 39-41 (explaining the system of lead underwriters and the involvement of numerous syndicates on a single risk).

92. Raphael, *supra* note 7, at 42. The underwriters each represent a different syndicate.

93. *See supra* note 37, at "Brokers"; Lockwood, *supra* note 6, at 42. It is the Broker's responsibility to solicit any and all underwriters to have his risk one hundred percent insured. *See* Raphael, *supra* note 6, at 42.

94. *See* Lockwood, *supra* note 6, at 41.

5. *Lead Underwriters*

The leading underwriter is the first to subscribe to the risk, and consequently, he negotiates its terms and conditions.[95] Each underwriter may subscribe a percentage of the risk with which he feels comfortable.[96] If subsequent underwriters agree to the terms, then they may also subscribe a percentage as a following underwriter.[97] The underwriters are ultimately responsible for the amount of liability to which they each subscribe to on behalf of their syndicates.[98]

C. *The Lloyd's Act of 1982 and the Council of Lloyd's*

A notable aspect of the Names, underwriters, syndicates and other significant positions, is that they had no existence or legitimacy beyond the coffee house until 1771 when the Society of Lloyd's was formed.[99] However, the Corporation of Lloyd's, or the Society of Lloyd's Underwriters, was only incorporated by an Act of Parliament in 1871.[100] The Corporation's function is similar to the organization that Edward Lloyd started as a place to conduct business.[101] Some of the Corporation's primary functions are that it "owns and maintains the Lloyd's building, rents out boxes, attends to physical security at the Room[102] and issues publications of com-

95. *See id.* at 40.

96. *See* Dacey, *supra* note 7, at 49.

97. *See* Lockwood, *supra* note 6, at 41.

98. *See* Dacey, *supra* note 7, at 35.

99. *See* Flower & Jones, *supra* note 9, at 57 (illustrating action on the part of seventy-nine underwriters and brokers who subscribed £100 each to form the Society of Lloyd's, which in turn enabled them to move to their own building as an organization).

100. *See supra* note 37; Lockwood, *supra* note 6, at 23; Brown, Lloyd's of London, *supra* note 10, at 99.

101. The Corporation function resembles that of Edward Lloyd's because it is not active in any of the actual insurance of Lloyd's. Similarly, the Corporation merely exists to oversee general day to day management. *See* Dacey, *supra* note 7, at 49, 50.

102. The "Room" is one large, open space unobstructed by any barriers in which all of Lloyd's syndicates conduct business. *See* Lockwood, *supra* note 6, at 29. *See also* Brown, Lloyd's of London, *supra* note 10, at 3-13 (describing the history and background of the Room and indicating that

> [o]riginally the Room was part of a coffee house in seventeenth-century London. Today it is roughly the size of the Concorde's hangar, air-conditioned, sound-proofed and equipped with every modern aid. Yet in essence it has not changed. If you go into the Room today you will still see what happened at Lloyd's in the seventeenth century).

mon interest to the market."[103] Essentially, the Corporation has more of an administrative function because it is responsible for most of the management issues, rather than the day to day activities of Lloyd's customers. Although the Lloyd's Corporation itself is incorporated, the Lloyd's of London organization is a separate entity consisting of unincorporated syndicate groups and individuals.[104]

Subsequently, the Lloyd's Act of 1982[105] granted authority to the Council of Lloyd's to govern the Society of Lloyd's Underwriters.[106] The Council is comprised of twenty-eight members, twelve of which are working Names, who are responsible for electing the Chairman.[107] The Council of Lloyd's accomplishes the goal of self-regulation.[108] In order to effectuate this goal, "the Council has enacted by-laws on administrative suspension, among other things, (permitting it to suspend any member, broker, underwriting agent or any employee of an underwriting agent) from doing business at Lloyd's for six months or more, as warranted."[109] Thus, Schedule 2 of the Lloyd's Act of 1982 assigns to the Council the tasks of "management and superintendence of the affairs of the Society and the power to regulate and direct the business of insurance at Lloyd's."[110] It is therefore evident that Lloyd's has an expansive history, and a subsequent intricate composition, which distinguishes it as a marketplace for insurance as opposed to an insurance company in general.

The history of Lloyd's demonstrates that although it is commonly referred to as one single entity which conducts its own in-

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Id. at 3-4.

103. *See* Dacey, *supra* note 7, at 50.

104. *See id.* at 49, 50 (explaining the function of the Corporation of Lloyd's and emphasizing that Lloyd's and the Corporation of Lloyd's are distinctly different because the insurance business of Lloyd's is written by individuals—not a corporation. Dacey also notes that there is an effort to maintain two separate entities because "[n]o Corporation employee (or their relative) can be a member of Lloyd's"). *Id.* at 50.

105. This was "a private act of Parliament which was intended to set the framework for Lloyd's self-regulation." *Id.* at 46. *See also* Lockwood, *supra* note 6, at 24-25 (explaining the role and functions of the Council of Lloyd's as a result of the Lloyd's Act).

106. *See* Lockwood, *supra* note 6, at 24.

107. *See* Dacey, *supra* note 7, at 47.

108. *See supra* note 30; Lockwood, *supra* note 6, at 24.

109. Dacey, *supra* note 7, at 46.

110. Lloyd's Act of 1982, Schedule 2.

suring business, it is actually an organization comprised of numerous smaller entities known as syndicates. These syndicates are composed of individuals, or Names, who provide all of the risk capital. Consequently, each syndicate is completely and separately liable for any risk to which it subscribes. Therefore, Lloyd's as an organization is unaffected by each syndicate's unlimited exposure to risks.

Moreover, an examination of Lloyd's history reveals a significant emphasis on tradition. This fact suggests, with some certainty, that the structure of Lloyd's may never change. Thus, when analyzing diversity jurisdiction and Lloyd's, one must consider our founding father's intentions, as well as the narrow expansions that have been made to the diversity jurisdiction rule over the years.

II. Overview of Diversity Jurisdiction

A brief overview of the history of diversity jurisdiction highlights the policy reasons for the different citizenship rules that apply to individuals, corporations, unincorporated associations and various other entities when determining diversity jurisdiction. Article III, section 2 of the United States Constitution gives the federal courts the power to maintain jurisdiction over specific cases and controversies.[111] As a result, a federal court may hear a case if it procures both personal jurisdiction over the parties and subject matter jurisdiction over the case or controversy.[112] Subject matter

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111. *See* U.S. Const. art. III, § 2, cl. 1.

> The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;— to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Id.

112. *See supra* note 120, at 18 (citing art. III, sec. 2, cl. 1 of the U.S. Constitution which confers subject matter jurisdiction to the federal judiciary). The federal judiciary power is statutorily granted in 28 U.S.C. § 1331 (1994 & Supp. III 1997): "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331 (1994 & Supp. III 1997).

jurisdiction provides two primary ways by which parties gain access to the federal courts: (1) a federal question in controversy[113] or (2) diversity of citizenship.[114] The presence of a federal question is a relatively simple principle to apply and, as a result, has not been the source of much controversy.[115] However, courts have encountered increased difficulty in discerning whether diversity exists with unprecedented entities such as Lloyd's.[116]

A. *Emergence and Purpose of Diversity Jurisdiction*

The Judiciary Act of 1789[117] represents the first time that Congress exercised its power to define diversity jurisdiction.[118] Under the Act, Congress declared that the federal courts had the power to hear cases between citizens of different states.[119] Diversity jurisdiction was primarily adopted by Congress to provide a

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113. *See id.*

114. *See* 28 U.S.C. § 1332 (1994 & Supp. III 1997). Of course, once litigation is already pending, the federal court may also obtain or maintain jurisdiction over matters by way of supplemental jurisdiction (28 U.S.C. § 1367 (1994)) or removal (28 U.S.C. § 1441 (1994)).

115. *See* 28 U.S.C. § 1331 (1994 & Supp. III 1997). *See also* Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 153 (1908) (establishing that it is not sufficient for the plaintiff to allege, as a federal question, that an anticipated defense by the defendant is unconstitutional, but must assert an issue based on federal law or the Constitution within his cause of action); Merrell Dow v. Thompson, 478 U.S. 804 (1986) (providing that a cause of action brought under a federal statute may not confer jurisdiction to a federal court if the statute does not provide for a private cause of action).

116. *See* McCormack, *supra* note 3, at 514 (noting that the identification or definition of citizenship for corporations and unincorporated associations is obscure and controversial).

117. Judiciary Acts are acts in which Congress establishes inferior federal courts and/ or adds or defines the scope of federal court jurisdiction. *See* Black's Law Dictionary 850 (6th ed. 1990). Congress has the power to establish inferior federal courts and define their powers pursuant to Article III of the U.S. Constitution. *See id.* The Judiciary Act of 1789 was the first time that Congress invoked this power. *See id.*

118. *See* Wright et al., *supra* note 18, § 3602, at 364.

119. *See* McCormack, *supra* note 3, at 512. The extent of Congress' action and the scope of jurisdiction that was granted is embodied in 28 U.S.C. section 1332. Note that pursuant to 28 U.S.C. § 1332, two prongs must be met to have proper diversity of citizenship: an amount in excess of $75,000 and *complete diversity* of citizenship. *See* 28 U.S.C. § 1332 (1994 & Supp. III 1997) (outlining the requirements for the federal courts to properly hear diversity of citizenship cases).

forum of fairness for citizens who felt they could be discriminated against if forced into a state court of the opposing party.[120]

The federal courts were designed as courts of limited jurisdiction and therefore, the embodiment of federal diversity jurisdiction was similarly intended to have a limited scope.[121] As a result, the term "citizen," within the requirement of "complete diversity of citizenship," has been the subject of much contention. Accordingly, the definition of citizen, as it applies to Lloyd's, is determinative of whether Lloyd's is properly characterized as an unincorporated association or a corporation.

B. *Evolution of the Term "Citizen"*

Although diversity jurisdiction was provided for within the United States Constitution and the Federal Judiciary Code, it remains ambivalent as to what qualifies one to be a "citizen." As a result, the federal courts have been left to decide the meaning of the term "citizen" and the assessment of citizenship has thus been a specific area of dispute when determining whether parties are citizens of different states.[122] Therefore, a proper citizenship assessment of Lloyd's depends upon an analysis of how courts have interpreted the meaning of "citizen."

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120. "The primary purpose of federal jurisdiction over disputes between *citizens* of different states is to provide a neutral forum for out-of-state parties who fear that they will be subjected to local prejudice if forced to litigate as strangers in a state court." Wright et al., *supra* note 18, § 3611, at 509 (emphasis added). A "fair forum" means that citizens of different states are provided a neutral forum in which to litigate their matter so that an out of state citizen may not have to fear being subjected to local prejudice. *See id.* The corporation was given a legal fiction because: 1) it is impractical and burdensome on the court to have to bring into court every possible person who comprises the corporation, 2) to allow individuals to sue corporate entities without unnecessary hardships, and 3) to give corporations a fair forum in which to litigate. *See* McCormack, *supra* note 3, at 516-19. *See* Wright et al., *supra* note 18, § 3601, at 338 (citing James Madison as an advocate for vesting the federal courts with diversity jurisdiction on a basis of being a fair forum. Reprinted in 3 Elliot, Debates on the Federal Constitution 486 (1836)); *see also id.* § 3611, at 509; § 3602, at 364.

121. *See id.*, § 3602, at 371 (citing Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303 (1809); Capron v. Van Noorden, 6 U.S. (1 Cranch) 126 (1804); Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803); Hale v. McCall, 425 F. Supp. 396 (E.D. Tenn. 1976)).

122. *See id.* § 3611, at 507. Ultimately Congress may ratify any judicial decisions which affect the definition of the term "citizenship." If Congress does choose to adopt any judicial interpretations, it would reflect this in a statute or by way of an amendment to a statute.

1. *Complete Diversity Requirement*

Traditionally, courts have been reluctant to expand diversity jurisdiction beyond its legislatively intended limited scope,[123] thereby keeping the definition of "citizen" rather narrow.[124] The reason for restricting availability to the federal forum is to minimize injustice for out-of-state litigants in state court and to prevent congestion in the federal court system.[125] This policy was reflected in the 1806 decision in *Strawbridge v. Curtiss,*[126] where the Supreme Court held that there must be complete diversity[127] between all plaintiffs and all defendants.[128] This decision effectively limited a "natural person's"[129] access to the federal courts by requiring each party with an interest in the litigation to be a citizen of a different state than all opposing parties.[130] The *Straw-*

123. Diversity jurisdiction has a limited scope because Congress intended for federal jurisdiction to extend only to citizens who maintain a complete diversity. *See* 28 U.S.C. § 1332 (1988 & Supp. III 1997). This limitation of complete diversity is exemplified by the judicial reluctance to grant unincorporated associations any sort of citizenship in the composite (like a corporation) which would increase their chances of complete diversity. For an illustration, see *infra* nn. 160-69 and accompanying text, describing the general rule regarding unincorporated associations and which entities fall into this category.

124. *See* Wright et al., *supra* note 18, § 3605, at 397-408 (describing complete diversity in general).

125. *See* Jack H. Friedenthal et al., Civil Procedure 23-27 (2d ed. 1993).

126. 7 U.S. (3 Cranch) 267 (1806).

127. Complete diversity means that no plaintiff may be a citizen of the same state as any of the defendants. *See* Wright et al., *supra* note 18, § 3605, at 397 (noting that as established by the Constitution and the Judicial Code, it is not necessary for all the parties on one side of an action to be citizens of different states).

128. *See id.*

129. Courts have debated exactly what distinguishes one as a natural person and

> [t]he result has been the evolution by the courts of the following tests for determining the citizenship of natural persons: (1) a person is considered a citizen of a state if that person is domiciled within that state and is a citizen of the United States; (2) a person is considered a citizen or subject of a foreign nation if he or she is accorded that status by the laws or government of that country.

Id. § 3611, at 507-09 (citations omitted).

130. *See Strawbridge*, 7 U.S. (3 Cranch) at 267-68. The Supreme Court requires those with a substantive right in the litigation to be joined as a party. The Court has also held that nominal or formal parties are to be ignored in diversity determinations. *See* Wright et al., *supra* note 18, § 3606, at 408-09 (citing Navarro Savings Ass'n. v. Lee, 446 U.S. 458 (1980); Salem Trust Co. v. Manufacturers' Finance Co., 264 U.S. 182 (1924)).

bridge decision, however, left many questions unanswered, such as how the diversity requirement would apply to citizens who were not natural persons. Therefore, in subsequent decisions the Court was forced to decide diversity issues in the context of corporations, associations and other similar, artificial entities.

2. *The Emergence of Corporations as Citizens*

The Supreme Court's first opportunity to address whether diversity jurisdiction should apply to corporations and whether or not corporations should be treated as citizens was in 1809 in *Bank of the United States v. Deveaux.*[131] In *Deveaux,* the Supreme Court held that corporations are not citizens in their own right,[132] and thus, one must look at the citizenship of each individual member to determine whether diversity jurisdiction exists.[133] *Deveaux* involved an incorporated bank which brought suit against two individuals for trespass and conversion.[134] The suit was brought in federal court on the basis of diversity jurisdiction.[135] The bank alleged diversity, arguing that because it was incorporated in Pennsylvania, it was a citizen of that state, and thus, diversity existed because all defendants were citizens of the State of Georgia.[136] In short, the bank argued that as a corporation, it was an aggregate body with the ability to sue.[137] Ultimately, the court determined that a corporation does not have "faculties of law" to have the ability to sue or be sued as an aggregate.[138] The bank, therefore, could not qualify as a citizen of its place of incorporation, but instead needed to bring suit as a series of individuals who represented and embodied the bank.

Over the next twenty five years, the existence and importance of corporations increased tremendously.[139] As a result, in *Louis-*

131. 9 U.S. (5 Cranch) 61 (1809).

132. The court came to the conclusion that a corporation was not a citizen in its own right because it was a mere legal entity which was not a citizen, and that in reality, a suit by a corporation was a suit by its members. *See id.* at 86.

133. *See id.* at 67 (describing that "the corporation should be considered as composed of natural persons").

134. *See id.* at 62.

135. *See id.* at 63.

136. *See id.* at 62.

137. *See* 9 U.S. (5 Cranch) 61, 62 (1809).

138. *See id.* at 64.

139. *See* Wright et al., *supra* note 18, § 3623, at 590 (noting that the corporation was an increasingly popular method of conducting business and thus the need

ville, Cincinnati & Charleston Railroad Co. v. Letson,[140] the Supreme Court validated the need for corporations to access the federal courts by granting them their own distinct citizenship status.[141] In *Louisville, Cincinnati & Charleston Railroad Co.*, Letson, a citizen of New York, brought a breach of contract action against the corporate defendant in a South Carolina federal court.[142] Members of the corporation were citizens of New York, North Carolina and South Carolina.[143] The plaintiff prevailed and the defendant appealed on the basis that the lower court did not properly procure jurisdiction over the case.[144] Essentially, the defendant argued that there was no diversity because certain members of the corporation were citizens of the same state as the defendant.[145] However, the Court determined that diversity existed because the corporation existed as a fictitious person.[146] The Court found the defendant to be a citizen of South Carolina, reasoning that if the corporation is recognized by the state in which it is incorporated, then it is to be deemed a person that can sue and be sued.[147] In sum, the Court chose to treat the corporation as an "artificial person" because 1) the corporation is capable of acting like a natural person[148] and 2) the purpose of a corporation "is to bestow the character and properties of individuality on a collective and changing body of men."[149]

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of corporations to access the federal courts was similarly enhanced because "[t]he necessities and conveniences of trade and business require that such numerous associates and stockholders should act by representation, and have faculty of contracting, suing, and being sued in a fictitious or collective name").

140. 43 U.S. (2 How.) 497 (1844).

141. *See id.* at 497 (overruling *Deveaux* and holding that a corporation is to be deemed a citizen of the state where it is chartered for the purpose of suing and being sued).

142. *See id.* at 498.

143. *See id.*

144. *See id.* at 498-99.

145. *See id.* at 499.

146. *See* Louisville, Cincinnati & Charleston R.R. Co. v. Letson, 43 U.S. (2 How.) 497, 499 (1844). The "fiction" applied to the corporation because the Court recognized it as an "artificial being" for the purpose of suing and being sued. *See id.* at 555.

147. *See id.* at 558.

148. *See id.* The Court was specifically referring to the fact that a corporation, like a natural person, can enter into contracts, manage its own affairs and own and convey property. *See id.*

149. *Id.*

Congress statutorily codified the *Letson* holding when it chose to reorganize the Judicial Code in 1958 by adding subsection (c) to 28 U.S.C. § 1332.[150] The subsection states that "a corporation is rendered a citizen of both its state of incorporation and the state in which it maintains its principal place of business."[151] Therefore, although the corporation has greater access to the federal courts, it is potentially a citizen of more than one state.

Subsection (c) was amended again in 1964 to address the uncertainty of insurers.[152] The amendment addressed a loophole which existed prior to that time, regarding the citizenship of insurers where some states had adopted legislation which enabled an action to be brought against the insurer without including the insured.[153] As a consequence, these state statutes allowed parties greater access to the federal courts by not defeating diversity of citizenship. The federal government chose to echo the state concerns when amending subsection (c) again in 1964. The effect of the amendment to subsection (c), therefore, is that insurance companies may be citizens of at least three different states:[154] "the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business . . . ."[155] In sum, this amendment improved the law because it brought 28 U.S.C. § 1332(c) back in line with its legislative intent—for the federal courts to be forums of limited access.[156]

These amendments[157] illustrate the extent to which Congress has been willing to expand the definition of "citizen" and how it has chosen to specifically address and define the citizenship of distinct

150. *See* Wright et al., *supra* note 18, § 3601, at 336 (noting that a corporation is a citizen of both its state of incorporation and the state where it maintains its principal place of business); *see also supra* note 2 (providing the language of 28 U.S.C. § 1332(c)).

151. 28 U.S.C. § 1332(c)(1) (1994 & Supp. III 1997).

152. *See* Wright et al., *supra* note 18, § 3601, at 336.

153. *See id.*

154. *See id.*

155. 28 U.S.C. § 1332 (c)(1) (1994 & Supp. III 1997).

156. Lloyd's does not fall into the category of an insurer under 28 U.S.C. § 1332 (c) because Lloyd's is not an insurance company, but a market place for insurance. *See supra* notes 10-11 and accompanying text.

157. The Code was amended one final time by the Foreign Sovereign Immunities Act of 1976, in order to address the issue of a foreign state suing a United States citizen. *See* Wright et al., *supra* note 18, § 3601, at 336. Subsection (a)(4) of 28 U.S.C. § 1332 states: "[t]he district courts shall have original jurisdiction . . .

groups. Furthermore, the amendments demonstrate that legislative action is the proper means by which diversity of citizenship and diversity jurisdiction should be defined.

3. *The Citizenship of Unincorporated Associations*

Due to the reluctance of the courts and Congress to expand diversity jurisdiction, unincorporated associations have not been given their own citizenship status. Throughout history, virtually all other forms of organizations, besides corporations and insurance companies, have been aligned as unincorporated associations.[158] The general rule is that the citizenship of unincorporated associations is determined by the citizenship of each of its individual members.[159] This rule has been applied to labor unions,[160] joint stock associations,[161] insurance associations or exchanges,[162] partnerships,[163] limited partnerships,[164] joint ventures,[165] religious or charitable organizations[166] and a governing board of an unincorporated association.[167]

Unincorporated associations are distinguished from corporations because "[g]enerally, these business organizations share the following characteristics: unified membership, no corporate-like

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between . . . a foreign state . . . as plaintiff and citizens of a State or of different States." 28 U.S.C. § 1332 (a)(4) (1994 & Supp. III 1997).

158. *See* Carden v. Arkoma Assocs., 494 U.S. 185 (1990).

159. *See* Chapman v. Barney, 129 U.S. 677 (1889) (being the first case to address specifically the issue of an unincorporated association suing in federal court under one citizenship. The court dismissed the case from federal court on the basis that is was a joint stock company (thus a partnership) and without evidence of citizenship of all it's members, it had no right to bring suit in federal court without a diversity of all its members, unless it was a corporation with diversity). *See id.* at 682; *see also* United Steelworkers of America v. R.H. Bouligny, Inc., 382 U.S. 145 (1965) (finding that an unincorporated labor union could not be its own juridical entity unless Congress first declares it as such).

160. *See United Steelworkers of America*, 382 U.S. at 153.

161. *See Chapman*, 129 U.S. at 679.

162. *See* Truck Ins. Exchange v. Dow Chem. Co., 331 F. Supp. 323 (W.D. Mo. 1971).

163. *See* Great S. Fire Proof Hotel Co. v. Jones, 177 U.S. 449 (1900).

164. *See* Carden v. Arkoma Assocs., 494 U.S. 185 (1990).

165. *See* Universal Steel & Metal Co. v. Railco, Inc., 465 F. Supp. 7 (D. Vt. 1978) (treating a partnership and joint venture as unincorporated associations).

166. *See* Lawson v. United House of Prayer for all People of the Church on the Rock of the Apostolic Faith, 252 F. Supp. 52 (E.D. Pa. 1966).

167. *See* Thomas v. Board of Trustees of the Ohio State Univ., 195 U.S. 207 (1904).

statutory birth, and no limitations on liability for a certain segment of its membership."[168] Courts find it necessary to define the citizenship of unincorporated associations differently because "significant disadvantages exist in treating an unincorporated association in the same manner as a corporation for jurisdictional purposes. The resulting increase in diversity of citizenship cases would conflict with the basic goal of the 1958 amendment to reduce the caseload of the federal courts."[169] Consequently, courts have found that unincorporated associations do not have the same needs of avoiding local prejudice as a singular, corporate entity.

4. *Exceptions to the Unincorporated Association Citizenship Status*

In 1933, the Supreme Court found that a particular unincorporated association had sufficient corporate characteristics to be treated as a juridical entity.[170] In *Puerto Rico v. Russell & Co.*,[171] the Supreme Court seemed to make an exception to the tradition of common law citizenship regarding corporate and unincorporated associations.[172] This case involved a situation where the people of Puerto Rico brought suit against Russell & Co., a sociedad en comandiata.[173] Individual members of the sociedad, none of whom were from Puerto Rico, removed the case to the United States District Court for Puerto Rico on the basis of diversity jurisdiction.[174] The petitioners, People of Puerto Rico, made a motion to remand

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168. McCormack, *supra* note 3, at 520.

169. Wright et al., *supra* note 18, § 3630, at 696.

170. A juridical or legal entity is "an entity . . . who has sufficient existence in legal contemplation that it can function legally, be sued or sue." Black's Law Dictionary 893-94 (6th ed. 1990). *See, e.g.*, Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 318 (7th Cir. 1998) (stating that Lloyd's argued that the syndicates were not juridical entities and thus could not be classified as an association because they had no capacity to sue or be sued).

171. 288 U.S. 476 (1933).

172. *See* Chapman v. Barney, 129 U.S. 677, 681-82 (1889) (holding that only incorporated associations are to be treated as legal persons and all others are to be deemed partnerships and thus unincorporated associations).

173. *See* Puerto Rico v. Russell & Co., 288 U.S. 476, 477 (1933). A sociedad en comandita is a unique, hybrid entity organized under the laws of Puerto Rico. *See* McCormack, *supra* note 3, at 525 (describing the sociedad and citing to *Mesa Operating Ltd. Partnership v. Louisiana Intrastate Gas Corp.*, 797 F.2d 238, 240 (5th Cir. 1986) for the coinage of the term "hybrid," which is used to describe an entity with corporate and association-type qualities like Lloyd's).

174. *See Russell & Co.*, 288 U.S. at 477.

back to the district court of San Juan, Puerto Rico averring that complete diversity did not exist, and thus, the federal court was without proper jurisdiction because the sociedad is a juridical entity organized under the laws of Puerto Rico.[175]

The court agreed with the petitioners and found the organization to be a juridical entity by analyzing substance over form.[176] Specifically, the court went beyond how the organization had labeled itself and considered the substance of the organization.[177] In the end, the court imported a corporate citizenship upon an unincorporated association.[178] The court held that although the organization was not like a "traditional" corporation, it was consistently treated as a juridical entity because of the corporate characteristics that it possessed.[179] As a result, the court could not justify treating the organization as a non-juridical entity simply because it did not fully resemble a "corporation."[180] However, "the holding in *Russell* should be confined to the peculiar type of association involved in that case and the legal system under which it was organized. Indeed, most of the subsequent cases limited *Russell* to its facts."[181] Therefore, although the *Russell* case may be viewed as the first of many exceptions, the courts have emphatically stated

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175. *See id.* at 478-79; *see also id.* at 448-49 (citing to various sections of the Civil Code of Puerto Rico (1930) and the Code of Commerce (1930) which created the sociedad and gives the sociedad the rights and privileges it exercises).

176. The Court looked at the organic statute which created the sociedad, the function and abilities of the sociedad, as well as its structure, creation and so forth. *See id.* at 481 (describing the Court's analysis beyond the basic assertion by the sociedad itself that it comprised an unincorporated association). The substance is the actual function and composition of the relationship and the form is the general structure and appearance.

177. *See id.* at 179-82 (discussing the treatment of the sociedad under the Code of Puerto Rico and the extent of liability and participation of each of the sociedad members).

178. *See id.* at 481.

179. The corporate characteristics of the sociedad include, amongst other elements, the ability to "contract, own property and transact business, sue and be sued in its own name and right." *Id.*

180. *See id.* at 481-82 (describing that the sociedad en comandita had corporate attributes that made it a juridical person). The Court added that it would not justify allowing nonresidents of Puerto Rico to form a juridical entity in Puerto Rico, yet be insulated from controversies arising under the local law. *See id.* at 482.

181. Wright et al., *supra* note 18, § 3630, at 692 (citing Brocki v. American Express Co., 279 F.2d 785 (6th Cir. 1960), *cert. denied*, 364 U.S. 871, 81 S.Ct. 113 (1960); Stein v. American Fed'n, 183 F. Supp. 99 (M.D. Tenn. 1960)).

(and implied) that *Russell* only applies to other federal cases involving a sociedad.[182]

The *Russell* case helps demonstrate that nothing can supersede the prerequisite of complete diversity in federal diversity jurisdiction cases.[183] The requirement of complete diversity is a prerequisite even when state law and Federal Rule 17(b)[184] allow an association to sue and be sued as a corporate entity.[185] For example, if a state allows a limited partnership to be defined as a "quasi-corporation" and declares this particular entity to be a citizen of a particular state, this will not automatically entitle the entity to be treated as a corporation for federal diversity purposes.[186] Therefore, regardless of whether an entity holds itself out as an unincorporated association or a corporation, it will be characterized as a corporation for the purpose of federal diversity jurisdiction only if it contains the requisite characteristics.[187]

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182. *See* United Steelworkers v. Bouligny, 382 U.S. 145 (1965) (holding that the labor union will not be defined similar to a corporation on the basis of *Russell* because *Russell* is limited to its specific facts).

183. *See* Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267-68 (1806).

184. Federal Rule of Civil Procedure 17(b), entitled "Parties Plaintiff and Defendant; Capacity to Sue or Be Sued," states:

> The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C. Sections 754 and 959(a).

Fed. R. Civ. P. 17(b).

185. *See* Wright et al., *supra* note 18, § 3630, at 690.

186. *See, e.g.*, Great S. Fire Proof Hotel Co. v. Jones, 177 U.S. 449 (1900) (deciding that although a limited partnership was defined under an act by the General Assembly of Pennsylvania as a "quasi-corporation" or a "new artificial person" and was doing business under a firm name, it would not be treated as a corporation for purposes of diversity jurisdiction).

187. Similarly, if an entity declares itself to be a corporation, but is in substance an unincorporated association, it will be denied access to federal courts without complete diversity of all its members. *See* Wright et al., *supra* note 18, § 3630, at 689-90 (presenting that complete diversity is required regardless of an organization's treatment by a state).

In sum, courts have reluctantly expanded the term "citizen" and have bestowed upon corporations and insurance companies a citizenship status.[188] Thus, the determination of citizenship status for unique organizations such as Lloyd's is of particular importance for future cases. The complete, legal appearance of the association must be considered when balancing the needs of the association to access the federal courts with the purpose of federal diversity jurisdiction and the general reluctance to broaden diversity jurisdiction.

III. THE CIRCUIT SPLIT: WHAT IS THE PROPER CITIZENSHIP OF LLOYD'S OF LONDON?

In 1994, the Sixth Circuit was faced with a new challenge: determining the citizenship of an entity which could not conveniently be categorized as a corporation or an unincorporated association for purposes of diversity jurisdiction. The Sixth Circuit, in *Certain Interested Underwriters at Lloyd's, London, England v. Layne,*[189] held that a Lloyd's insurance syndicate acquires the citizenship of strictly the agent of the syndicate.[190] However, since 1994, the Seventh Circuit has also had an opportunity to decide the same issue.[191] In contrast, the Seventh Circuit held that a syndicate procures the citizenship of each of its subscribing members.[192] Accordingly, these two decisions embody the current circuit split as to the proper citizenship of Lloyd's.

The Sixth and Seventh Circuits each analyze the agency relationship[193] which exists within Lloyd's. More specifically, the courts focus directly on the syndicates and the relationship be-

188. *See supra* part II.B.2 "The Emergence of Corporations as Citizens" (describing the involved, well reasoned process the Supreme Court and Congress endured to ultimately grant a corporation and insurers citizenship).

189. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39 (6th Cir. 1994).

190. *See id.* at 43.

191. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314 (7th Cir. 1998).

192. *See id.* at 317.

193. Agency is "[a] relationship between two persons . . . where one (the agent) may act on behalf of the other (the principal) and bind the principal by words and actions . . . . Or relationship where one person confides the management of some affair, to be transacted on his account, to other party"). Black's Law Dictionary 62 (6th ed. 1990).

tween the underwriter and the Names.[194] Under the liability principles of agency, courts differ as to whether a Lloyd's syndicate falls into a category of a corporation or an unincorporated association.[195] Each court, however, comes to its respective conclusion by applying the real parties in interest test to determine whether complete diversity exists.[196]

A. *Sixth Circuit*

Certain Interested Underwriters at Lloyd's, London, England v. Layne[197] is the first case to provide guidance as to the proper assessment of the citizenship of a Lloyd's syndicate. In this case, the underwriters successfully brought suit against the insured in the United States District Court, Eastern District of Tennessee, to deny insurance coverage on the basis of fraud.[198] The defendants (citizens of Tennessee) appealed, arguing that members of the Lloyd's syndicate were also citizens of Tennessee and thus diversity was destroyed and the district court did not properly procure jurisdiction.[199] The underwriters urged that diversity existed because they (the underwriters solely) were citizens of the United Kingdom and the defendants were citizens of Tennessee.[200] The underwriters argued the irrelevancy of whether or not some of the

194. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 317 (6th Cir. 1994); Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43 (7th Cir. 1998).

195. When an entity is before the court in diversity jurisdiction cases, the court has two options: 1) consider the entity as a corporation or 2) as an unincorporated association. Therefore, if it determines the syndicate to be an unincorporated association, then it must consider the citizenship of all members comprising the particular Lloyd's syndicate. Whereas, if it determines it to be like a corporation, then it would only consider the citizenship of the lead underwriter (as with a corporation the courts only consider the corporation's principal place of business and state of incorporation).

196. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 318-19 (6th Cir. 1994); Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 42-43 (7th Cir. 1998); *see also* Fed. R. Civ. P. 17(a), (b) (embodying the real party in interest rule); Wright et al., *supra* note 18, § 3606, at 409-15 (stating also that a court cannot ignore the citizenship of an "indispensable" party who is not yet a party to the action); *see also* part IV.A (which describes the real parties in interest test).

197. 26 F.3d 39 (6th Cir. 1994).

198. *See id.* at 41.

199. *See id.*

200. See *id.* (citing 28 U.S.C. § 1332(a)(3) which would confer diversity jurisdiction).

members of the syndicate were from Tennessee because for diversity purposes, only the citizenship of the underwriters themselves was pertinent.[201] The court agreed with the underwriters by utilizing the real parties in interest test to determine the proper parties.[202] Ultimately, the Sixth Circuit held that the underwriters—and not all the Names comprising the syndicate—were the real parties in interest.[203] The Sixth Circuit concluded that the syndicate takes on the citizenship of only the agent (underwriter) because it did not find the syndicate analogous to previous, traditionally defined unincorporated associations.[204]

Primarily, the court distinguished this particular syndicate from generally accepted unincorporated associations on the basis that the principals were undisclosed.[205] The court came to this determination for two reasons. First, the court discussed the 1990 Supreme Court decision in *Carden v. Arkoma Associates*[206]—which held that a limited partnership is considered an unincorporated as-

201. *See id.*

202. *See id.* at 42, 43.

203. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 42-43 (6th Cir. 1994) (making reference to the "real party to the controversy" test and citing Carden v. Arkoma Assocs., 494 U.S. 185, 187 n.1 (1990)).

204. The "traditional" common law rule is that when a Congressional statute is silent regarding the citizenship of a certain organization, then the courts must apply the unincorporated association label and the norm is to treat the organization as a partnership. *See Carden,* 494 U.S. at 195-96; *see also* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 317 (7th Cir. 1998) (applying this common law rule to the syndicates before it). The Sixth Circuit also came to the conclusion that the "traditional" rules of an unincorporated association do not apply to Lloyd's, and that only the underwriter is a real party in interest, by applying the substantive law of Tennessee. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43 (6th Cir. 1994) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) for the proposition that "the governing substantive law in diversity actions is state law, and in this case that is Tennessee law"). Applying Tennessee law the court found that the investor principals (Names) had no substantive right to relief. *See id.* Rather, the court found that the agent, underwriter, was liable on the insurance contract and thus interpreted Tennessee law to deem only the agent as a real party in interest. *See id.*

205. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43 (6th Cir. 1994). An undisclosed principal is "a principal whose identity is unknown by a third person, and the third person has no knowledge that the agent is acting in an agency capacity at the time the contract is made." Black's Law Dictionary 1527 (6th ed. 1990). This is different from principal in that a principal "is one who has permitted or directed another to act . . . such that the acts of the agent become binding on the principal." *Id.* at 1192.

206. 494 U.S. 185 (1990).

sociation[207] but distinguished the *Carden* holding as it applied to the Lloyd's syndicate.[208] Furthermore, the Sixth Circuit identified that Lloyd's has the appearance of a limited partnership.[209] Nevertheless, by analyzing substance over form, it ultimately determined that one of the crucial elements which exists in a limited partnership does not exist in the Lloyd's syndicate—the element of limited liability.[210] As a result, the court found that Lloyd's was similar to an agency rather than a partnership.[211] The court found an agent-undisclosed principal relationship due to the fact that the underwriters present themselves as the only liable members on the contract because no syndicates or Names were mentioned anywhere in the policy.[212]

Second, the court concluded that a syndicate was comparable to a corporation for diversity jurisdiction purposes because the underwriters are appointed as agents and under Tennessee law, agents are fully liable for the undisclosed principals.[213] The court made particular reference to the fact that the insured chose to sue the agents, but could have sued the agent (the underwriter, where in this case there was more than one underwriter so there were numerous "agents") or principals (the Names).[214] The insurer here chose to sue the one person who represented and was liable for the group, as opposed to the numerous individuals who made up the group.[215] Consequently, the court held that only the underwriter

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207. *See Carden.*, 494 U.S. at 190. The *Carden* court came to this 5-4 decision by adhering to the "oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of 'all the members.'" *Id.* at 195 (quoting Chapman v. Barney, 129 U.S. 677, 682 (1889)).

208. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 42-43 (6th Cir. 1994).

209. *See id.* at 42.

210. *See id.* (citing Daly v. Lime Street Underwriting Agencies Ltd., 2 FTLR 277, 279 (Q.B. 1987)).

211. *See id.* at 43.

212. *See id.*

213. *See id.* The court asserts that "Tennessee follows the venerable common law rule" and refers to Restatement (Second) of Agency §322 (1958).

214. *See id.* (quoting Holt v. American Progressive Life Ins. Co. 731 S.W.2d 923, 925 (Tenn. Ct. App. 1987)).

215. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43 (6th Cir. 1994).

could be deemed a real party in interest under the Tennessee law of agency and undisclosed principals.[216]

B. *District Court Decisions*

As the Sixth Circuit was deciding *Certain Interested Underwriters*, the District Court of Maine was tackling the same issue. In *Bath Iron Works Corp. v. Certain Member Co. of the Institute of London Underwriters*,[217] the defendants (underwriters of Lloyd's) attempted to remove to federal district court an action for declaratory and monetary relief by a Maine corporation, Bath Iron Works Corporation (hereinafter "BIW").[218] The defendants argued that their presence in federal court was proper because only the active underwriters, who act as the agents for the Names, and not all of the syndicate members (i.e. the Names), constitute real parties in interest.[219] Like the Sixth Circuit, the *Bath Iron Works* court applied a real parties in interest test.[220] But this court reached an opposite conclusion, holding that the *potential for liability* should determine who is a proper defendant, and not merely the identification of an agency type relationship.[221] To this end, the court noted that it could not ignore the Names as real parties because their liability was certain considering it was their inventory and personal assets which ultimately funded any settlement or judgment against the Lloyd's syndicate.[222] The court confirmed its conclusion by mentioning that BIW did not sue the syndicate itself as in *Certain Interested Underwriters*, but instead sued the "active"

216. *See id.* at 43 (asserting that Tennessee follows the same rule as that of the common law and thus referred to the Restatement (Second) of Agency § 322 (1958) which states that: "An agent purporting to act upon his own account, but in fact making a contract on account of an undisclosed principal, is a party to the contract"). *Id.*

217. 870 F. Supp. 3 (D. Me. 1994).

218. *See id.* at 4.

219. *See id.* at 5.

220. *See id.* 6-7.

221. *See id.* at 7.

222. *See id.* The court seems to be confused in that it refers to Names and underwriters as one in the same. *See id.* at 7 n.8. However, an underwriter is a Name, but not all Names are underwriters. *See supra* part I.B.1,3 (describing the terms Name and underwriter). Regardless, this does not affect the court's analysis because it tends to distinguish Names and underwriters by using "active" Names or underwriters and "non-active" Names or underwriters. Furthermore, it's analysis is not affected because all Names, as underwriters or not, encounter unlimited liability—which is the heart of the court's decision.

and "non-active" underwriters.[223] However, the court notes that if BIW had chosen to sue the syndicate, it would necessarily utilize a *Carden* analysis.[224] Therefore, because *Carden* mandates that the citizenship of unincorporated associations must be determined by looking at the citizenship of each member, the court mentions that it would define a Lloyd's syndicate as such and consider the citizenship of each member comprising the syndicate.[225]

The court, therefore, found that the Names could not be considered merely nominal or formal parties in the litigation because of their potential liability.[226] Being considered a formal or nominal party would effectively render the parties insignificant and thus not real parties in interest.[227] Rather, because each member (Names and underwriters) is potentially liable to the insured under the policy, he constitutes a real party in interest, regardless of whether or not he is a "disclosed" principal.[228] Consequently, the United States District Court remanded the case back to the Maine Superior Court because of a lack of diversity.[229] The United States District Court concluded, unlike the Sixth Circuit in *Certain Interested Underwriters,* that Lloyd's citizenship is determined by considering the citizenship of all underwriters and Names.[230]

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223. *See* Bath Iron Works Corp. v. Certain Member Cos. of the Institute of London Underwriters, 870 F. Supp. 3, 7 (D. Me. 1994). Again, the court here seems to use the term "non-active" underwriters as a reference for a Name.

224. *See id; see also supra* part III.A. for a discussion of the *Carden* analysis.

225. *See id.*

226. *See id; see also* Salem Trust Co. v. Manufacturers' Fin. Co., 264 U.S. 182 (1924) (holding that the presence of a formal or nominal party may be ignored in determining jurisdiction; thus the formal and nominal parties do not equal real parties in interest). A formal or nominal party is one who is brought into litigation "not because he is immediately liable in damages . . . but because his connection with the subject matter is such that the plaintiff's action would be defective, under the technical rules of practice, if he were not joined." Black's Law Dictionary 1049 (6th ed. 1990).

227. *See* Fed. R. Civ. P. 17(a), (b) (discussing that the only parties that can sue and be sued are those which are "real parties in interest"); *see also* Wright et al., *supra* note 18, § 3606, at 416 (noting that a "nominal" party thus does not have the right to sue or represent a beneficial interest); *infra* part IV.A. (explaining real parties in interest).

228. *See* Bath Iron Works Corp. v. Certain Member Cos. of the Institute, 870 F. Supp. 3, 8 (D. Ct. Me. 1994).

229. *See id.*

230. *See id.* at 7.

Subsequently, in 1996, a New York district court in *Humm v. Lombard World Trade, Inc.*[231] also determined that the citizenship of each Name comprising the syndicate was an essential part of qualifying citizenship in a lawsuit against the underwriter or syndicate.[232] *Humm* involved a situation where Lombard World Trade, Inc. (Lombard), the defendant, obtained a marine cargo insurance policy with Lloyd's.[233] The plaintiff, Timothy Maxwell Humm ("Humm"), was a lead underwriter of the insurance policy who sued Lombard on behalf of himself and all interested underwriters.[234] Lombard ultimately brought a counterclaim against Humm.[235] As counterclaim defendants, he joined Lowndes Lambert Cargo Limited ("Lowndes Lambert"), the insurance broker, and John Does 1 through 50, representing all of the Names who had potential liability under the policy.[236] Lombard was a Delaware corporation with its principal place of business in New York.[237] The underwriters of Lloyd's were, for the most part, British citizens, although some of the Names were citizens of New York.[238] Lloyd's argued that the underwriters represented the interests of the members, and thus, the underwriters were the only real parties in interest.[239] Lombard, rather, contended that all of the Names constituted real parties because they had several liability on the policy.[240]

The *Humm* court employed a slightly different rationale than that of the court in *Bath Iron Works.*[241] In fact, it adopted an agency analysis similar to that of the Sixth Circuit in *Certain In-*

231. 916 F. Supp 291 (S.D.N.Y. 1996).

232. *See id.* at 297, 98.

233. *See id.* at 292.

234. *See id.*

235. *See id.*

236. *See id.* at 292-93.

237. *See* Humm v. Lombard World Trade, Inc., 926 F. Supp. 291, 294 (S.D.N.Y. 1996).

238. *See id.* at 293.

239. *See id.* at 294.

240. *See id.* Several liability refers to the notion that each member individually pledged to be liable—opposed to a theory of joint liability where collectively members agree to be liable.

241. Although the court *Humm* used a different rationale than that in *Bath Iron Works*, *Humm* ultimately squared with *Bath Iron Works*; because the Names are severally liable, they are real parties in interest. *See id.* at 297, 298.

terested Underwriters.[242] However, the *Humm* court concluded that the Names were not undisclosed principals[243] because although their *identity* was not known, the Names' *presence* was known.[244] Thus, the *Humm* court considered the Names to be "partially disclosed" principals.[245] The court arrived at this conclusion because although the Names were not specifically named on the contract, any reasonable person would know that the contract included the Names and not only the agent underwriter.[246]

The *Humm* court differentiated *Certain Interested Underwriters* on the premise that a Name does not amount to an undisclosed principal.[247] Agency law does not require that the name of a principal be disclosed for a principal to be liable.[248] Rather, the identity of the principal, in that the insured knows that the principals exists, is what is important.[249] A principal cannot be undisclosed, and thus the agent cannot purportedly be acting in his own interest, if a third party can reasonably presume or deduce that the agent is representing others. The court concluded that any reasonable person would infer, as a result of the notoriety of Lloyd's, that the underwriter does not and cannot possibly insure the policy on his own.[250] As a result, the court found that to concentrate solely on the citizenship of the underwriting agents is unfair and illogical because they are not the only liable parties on the policy.[251] The court certified this rationale on the basis that the Names are severally liable for the syndicates' risks under the policy.[252]

The *Humm* court also distinguished *Certain Interested Underwriters* to the extent that the plaintiffs in *Certain Interested Un-*

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242. *See id.* at 295-98 (discussing the Sixth Circuit analysis and conclusion and employing its own examination of agency).

243. *See* Humm v. Lombard World Trade, Inc., 926 F. Supp. 291, 295 (S.D.N.Y. 1996).

244. *See id.* at 295-96.

245. *See id.* at 295.

246. *See id.* at 295-96 (quoting the Restatement (Second) of Agency § 4 (1958) which in sum states that situations arise where a reasonable person could conclude that the agent was acting for a principal which makes the principals liable).

247. *See id.*

248. *See* Humm v. Lombard World Trade, Inc., 926 F. Supp. 291, 295-96 (S.D.N.Y. 1996) (quoting Restatement (Second) of Agency § 4 (1958)).

249. *See id.* (quoting Restatement (Second) of Agency § 4 (1958) (citing Restatement (Second) of Agency § 9 comment d (1958))).

250. *See id.* at 296.

251. *See id.* at 297-98.

252. *See id.*

derwriters chose to sue only the underwriting agent, whereas the defendant's counterclaim in *Humm* was against *all* of the principals. This counterclaim served to hold all of the potentially liable people accountable. The *Humm* court, however, like the Maine District Court's decision in *Bath Iron Works,* held that even if the plaintiffs had only sued the agent, "such an election does not support the finding that the Names are no longer liable on the Policy."[253] Therefore, had the facts been different, each member comprising the syndicate group would still be considered for citizenship purposes.[254] The fact that each Name was potentially liable on the policy garners him with a substantive interest in the litigation.[255] To this end, each Name must be considered a real party in interest and the syndicate regarded as an unincorporated association for citizenship purposes.[256]

Ultimately, the court held that it lacked jurisdiction because there was no diversity since at least one of the Names was from New York. The plaintiff, Lombard World Trade, Inc., was also from New York and thus the case was subsequently dismissed.[257] The court proclaimed that its conclusion was consistent with the reasoning of *Carden v. Arkoma*:[258] if an entity is not a corporation, then it is deemed an unincorporated association with no legal identity and each member's citizenship is therefore relevant.[259]

Accordingly, the Sixth Circuit stands alone in its decision to treat Lloyd's as a citizen according to the citizenship of only the syndicate's lead agent, opposed to all of the syndicate's members. The result of the Sixth Circuit's holding is to grant Lloyd's citizenship similar to that of a corporation.[260] Consequently, Lloyd's has

253. *Id.* at 296.

254. *See* Humm v. Lombard World Trade, Inc., 926 F. Supp. 291, 296 (S.D.N.Y. 1996).

255. *See id.* at 297 (finding that Humm, the underwriter, did not present any evidence that he owned all of the substantive rights to the Policy at issue and therefore because each Name is liable for any loss under the Policy he has substantive rights in the litigation).

256. *See id.* at 297-98.

257. *See id.* at 298-99 (noting also that jurisdiction is frustrated because of a failure to comply with the jurisdictional amount required of 28 U.S.C. § 1332 of $50,000). Note that the minimum claim requirement for federal diversity jurisdiction in now $75,000. *See* 28 U.S.C. § 1332 (1994 & Supp. III 1997).

258. *See id.* at 299.

259. *See id.*

260. Citizenship is assessed as that similar to a corporation because only the lead underwriters citizenship will be viewed for diversity purposes. A corporation

greater access to the federal courts because diversity will rarely be an issue.[261] In contrast, the Seventh Circuit concluded that Lloyd's should be treated as an unincorporated association for citizenship purposes.

C. *Seventh Circuit*

Finally, in 1998, the Seventh Circuit decided the issue of citizenship in diversity jurisdiction cases for Lloyd's syndicates. In *Indiana Gas Co. v. Home Insurance Co.*,[262] Lloyd's, the defendant and insurer of the plaintiff, refused to pay for some of the plaintiff's cleanup costs.[263] As a result, the plaintiff brought suit against Lloyd's and other insurers in the United States District Court for the Northern District of Indiana.[264] The plaintiff appealed to the Seventh Circuit Court of Appeals after most of the claims were terminated or settled in the defendant's favor.[265] However, prior to deciding the substantive issues, the court first needed to attribute a citizenship status to Lloyd's.[266] The court followed the two previous decisions by the Maine and New York district courts[267] and

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also, potentially, will only be a citizen of one or two states. Opposed to an unincorporated association where the citizenship of all the members counts and thus the potential for diversity is rare.

261. Diversity will rarely be an issue because a corporation is only deemed to be a citizen of the state where it is incorporated and the state where it maintains its principal place of business. *See* 28 U.S.C. § 1332(c)(1) (1994 & Supp. III 1997).

262. 141 F.3d 314 (7th Cir. 1998).

263. *See id.* at 315.

264. *See id.*

265. *See id.*

266. *See id.* at 315-16. The district court found in defendant's favor and Indiana Gas appealed. Before proceeding, the Seventh Circuit attempted to ensure that subject matter jurisdiction existed and "inquired at oral argument whether . . . any of the names in any of the syndicates was a citizen of Indiana." *Id.* at 316. As a result, the court found it necessary to "decide whether the citizenship of the underwriters is the citizenship of every name, or only of the active underwriter who acts as the managing agent." *Id.* at 317.

267. Although only Maine (*see Bath Iron Works*, 870 F. Supp. 3) and New York federal district courts (*see Humm*, 916 F. Supp. 291) were discussed here. *See also* Bell & Assocs. v. Lloyd's Underwriters, No. 92 Civ. 5249, 1998 WL 274346 (S.D.N.Y.) (holding that the Lloyd's syndicate group is a citizen of each state where each Name is a citizen); Chase Manhattan Bank v. Aldridge, 906 F. Supp. 870 (S.D.N.Y. 1995) (holding that they syndicate is a citizen of the state(s) where each investor, Name, is a citizen); Lowsley-Williams v. N. River Ins. Co., 884 F. Supp. 166 (D.N.J.1995) (finding that since the parties stipulated that the Names were personally liable on the Policies, they were real parties in interest); and Transamerica Corp. v. Reliance Ins. Co., 884 F. Supp. 133 (D. Del. 1995) (finding that

held that the Lloyd's syndicate was a citizen of all of the jurisdictions in which the Names, as well as the underwriters, were citizens.[268]

The Seventh Circuit, like the New York district court in *Humm*, focused on the fact that each Name faced unlimited liability, and therefore, the syndicate is similar in structure to a partnership which would qualify it as an unincorporated association.[269] The court noted that the Sixth Circuit's holding and rationale in *Certain Interested Underwriters* was inaccurate.[270] The Sixth Circuit's agency interpretation could not be condoned by the Seventh Circuit because although an agent may appear to be liable for an undisclosed principal, an agent and undisclosed principal are still bound by the contract to which he subscribes.[271]

In particular, the court mentioned the general rule of agency law that as long as the agent is acting within the scope of his agreement with the principal, then the principal(s) will be bound by the agent's actions.[272] "The proposition that an agent for an undisclosed principal is liable does not imply that the undisclosed principal is not bound by the contract . . . . When the principal's interests are affected by the litigation, the principal's citizenship counts even if the agent is the sole litigant."[273] Therefore, the court found the language in the underwriting agent's employment contract—stating that he has the right to pursue litigation—to be irrelevant because all of the Names are necessary parties whose citizenship is considered because their interests are affected by the litigation.[274] Consequently, the court determined that the lan-

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syndicates are citizens of each state as all of the Names as the distinction between the active underwriters and Names is unnecessary).

268. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 317 (7th Cir. 1998).

269. *See id.* at 316. This reasoning is unlike that employed by the Sixth Circuit in *Certain Interested Underwriters* who only considered a *limited* partnership and not a general partnership.

270. *See id.* at 318-19.

271. *See id.* at 319.

272. *See id.* (citing Restatement (Second) of Agency §§ 186, 302 (1958)).

273. *Id.*

274. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 319 (7th Cir. 1998) (referring to English law which protects Name's liability by asserting that they cannot be sued by insureds); *see also supra* notes 183-87 and accompanying text (describing that a state law's characterization of an organization will not upset the federal analysis).

guage of the contract could not defeat the fact that the Names were liable on the policy and thus real parties in interest.[275]

In reaching it's decision, the court was also mindful of Supreme Court precedent regarding the reluctance to extend diversity jurisdiction by judicial interpretation.[276] The court followed the general rule that when Congressional statutes are silent regarding a new organization, the court must follow the common law rule that all unincorporated associations are treated as a partnership.[277] The court here reasons that precedent, in dealing with the citizenship of unincorporated associations, demands this conclusion.[278]

The Seventh Circuit rule is distinctly different from the Sixth Circuit's holding. The Seventh Circuit adhered to the generally accepted standard for all unincorporated associations and held that a Lloyd's syndicate possesses the citizenship of all of its members. Unlike the Sixth Circuit, the Seventh Circuit would not allow the case to turn on whether or not the principal was undisclosed, because under an agency theory, all parties are real parties in interest. Thus, the Sixth and Seventh Circuits are now split as to who is a real party in interest in an action involving a Lloyd's syndicate group. In sum, courts have assessed a Lloyd's syndicate's citizenship by 1) strictly utilizing only the under-writing agents who represent the syndicates or 2) looking at all of the Names who make up the syndicates.[279]

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275. *See id.*

276. *See id.* at 317-18. The court followed the general rule of *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990), and discussed *Puerto Rico v. Russell* stating that the approach in these two cases echoed a strong reluctance of the Court to extend the interpretation of diversity jurisdiction. *See id.* (finding that although underwriting syndicates are unusual organizations, the established rule is that any organization other than a corporation will be treated like a partnership for diversity purposes).

277. "*Carden* articulated a general rule: *every* association of a common-law jurisdiction other than a corporation is to be treated like a partnership." *Indiana Gas Co.*, 141 F.3d at 317.

278. *See id.* at 317-18 (citing Carden v. Arkoma Assocs., 494 U.S. 185 (1990); Puerto Rico v. Russell, 288 U.S. 476 (1933)).

279. *See, e.g.*, Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39 (6th Cir. 1994); Bath Iron Works Corp. v. Certain Member Cos. of the Institute, 870 F. Supp. 3 (D. Me. 1994); Humm v. Lombard World Trade, Inc., 916 F. Supp. 291 (S.D.N.Y 1996); Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314 (7th Cir. 1998).

IV. Analysis of Lloyd's as it Relates to Real Parties in Interest, the Agency Theory and Unincorporated Associations

The courts agree that an agency relationship exists within the Lloyd's syndicate. Disagreement exists, however, over which members of a Lloyd's syndicate constitute a real party in interest. This is important because, as explained previously,[280] a determination of whether federal courts properly procure jurisdiction in a section 1332 diversity action, depends on which citizenship attaches to each party.[281] To reach a rational conclusion, it is most logical to analyze the substance of the relationship over its form.[282] This is significant because a court cannot assume that Lloyd's is actually organized as the type of entity it declares itself to be. For example, if Lloyd's proclaims itself to be a partnership, then a court must critically analyze the composition and function of Lloyd's to determine if it does indeed have all of the requisite elements to constitute a partnership. Accordingly, this section explains "real parties in interest." It will then focus on the agency relationship that exists within Lloyd's to explain which members should qualify as a real party in interest. Part IV.C. then examines, in light of the agency relationship, whether or not Lloyd's, as an unincorporated association, qualifies as an exception to the section 1332 citizenship assessment.

A. *Real Parties in Interest*

Assessing real parties in interest[283] is a primary step to determine which party's citizenship a court will consider in diversity jurisdiction actions and ultimately, whether complete diversity

280. *See supra* part II.A., B.1 (explaining the purpose and requirements of diversity jurisdiction).

281. *See* 28 U.S.C. § 1332 (1994 & Supp. III 1997) (embodying the requirement that each plaintiff's citizenship must be diverse from each defendant's).

282. The substance is the actual function and composition of the relationship and the form is the general structure and appearance.

283. *See* Fed. R. Civ. P. 17(a) and (b) (embodying the rule to define a real party in interest) The real party in interest is the party who "has the legal right under the applicable substantive law to enforce the claim in question." Black's Law Dictionary 1264 (6th ed. 1990). A determination of the appropriate real parties in interest has historically been defined by way of case law. *See* Chapman v. Barney, 129 U.S. 677 (1889); Louisville, Cincinnati & Charleston R.R. Co. v. Letson, 43 U.S. (2 How.) 497 (1844). Also, Rule 17 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1332 aid in determining real parties in interest.

exists.[284] Only parties who have the right to bring forth or maintain a substantive claim are deemed to have a "real interest" in the action and thus will be considered for diversity purposes. Otherwise, the parties will be treated as merely formal or nominal parties and their citizenship will not matter[285] because only a real party in interest has the ability to sue or be sued.[286] In applying this test, the courts must look to the state law[287] to determine whether the parties, and most importantly which members of the parties, are entitled to enforce the right asserted as diverse citizens.[288]

Once a party is deemed a real party in interest in the action, the court must then determine the citizenship of the particular person or entity. In cases involving individuals, corporations or unincorporated associations, the courts can apply the well-established citizenship rules with relative ease. 28 U.S.C. § 1332 embodies the rule for diversity of citizenship and establishes that individuals are considered citizens of the state in which they are domiciled.[289] Corporations, pursuant to 1332(c), are deemed citizens of both the state of its incorporation and the state in which it maintains its principal place of business.[290] In contrast, an unincorporated association takes on the citizenship of each member of

284. *See* Carden v. Arkoma Assocs., 494 U.S. 185, 187 n.1 (1990); Bath Iron Works Corp. v. Certain Member Cos. of the Institute, 870 F. Supp. 3, 5 (D. Me. 1994); Humm v. Lombard World Trade, Inc., 916 F. Supp. 291, 294-95 (S.D.N.Y. 1996) (citing Navarro Savings Ass'n v. Lee, 446 U.S. 458, 460-61 (1980); *Carden*, 494 U.S. at 188 n.1; and, *Bath Iron Works*, 870 F. Supp. at 5).

285. *See* Fed. R. Civ. P. 17(a), (b) (discussing that the only parties that can sue and be sued are those which are "real parties in interest"); *see also* Humm v. Lombard World Trade, Inc., 916 F. Supp. 291, 295 (S.D.N.Y. 1996) (citing Navarro Savings Ass'n v. Lee, 446 U.S. 458, 460-61 (1980); *Carden*, 494 U.S. at 188 n.1; and, *Bath Iron Works*, 870 F. Supp. at 5)).

286. *See id.; see also* Wright et al., *supra* note 18, § 3606, at 416 (noting that a "nominal" party thus does not have the right to sue or represent a beneficial interest).

287. State law is the governing substantive law in diversity actions.

288. Therefore *Certain Interested Underwriters* involved Tennessee law as the substantive law. *See* Certain Interested Underwriters, at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43 (6th Cir. 1994). *Indiana Gas Co.* involved Indiana state law as the governing substantive law. *See* Indiana Gas Co., Inc. v. Layne, 141 F.3d 314 (7th Cir. 1998).

289. *See* 28 U.S.C. § 1332(a) (1994 & Supp. III 1997).

290. *See* 28 U.S.C. § 1332(c) (1994 & Supp. III 1997).

its organization.[291] The dilemma, however, is that the courts are unable to attach a citizenship to Lloyd's of London because of an inability to determine which parties constitute "real parties in interest."

B. *Agency Relationship Theory*

It is necessary to identify Lloyd's method of operation to determine which parties within Lloyd's constitute "real parties in interest." The relationship of the Underwriting agent and the Name is distinctly an agency relationship.[292] An agency relationship is created by the consent of two or more persons,[293] particularly "when one person manifests an intention that another shall act in his behalf and the other person consents to represent him."[294] The Lloyd's syndicate has traditionally operated as an agency. The Names and underwriters form an agency when the Name agrees to let the lead underwriter subscribe to a risk on his behalf. Although the Names have unlimited liability, they do not have the power or authority to underwrite risks on their own.[295] Therefore, as members of the syndicate, the Names consent to and rely on Lead Underwriting members to enter into insurance "contracts" on their behalf.[296] At this point, each member of the syndicate is exposed to potential liability.[297] The underwriter, therefore, acts as an agent in representing the interests of the Names—as the principals—to third parties.

The underwriters are bound to the Names, and subsequently to third parties, by way of a contract. Consequently, one may be compelled to apply the law of contracts to such relationships. In

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291. *See* Carden v. Arkoma Assocs., 494 U.S. 185, 195 (1990) (holding that all unincorporated associations citizenship is that of all of its members).

292. *See* John W. Pratt & Richard J. Zeckhauser, *Principals and Agents: An Overview, in* Principals and Agents: The Structure of Business 1, 2 (John W. Pratt & Richard J. Zeckhauser eds., 1991) (stating that "[w]henever one individual depends on the action of another, an *agency relationship* arises").

293. *See* Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* 32 (2d ed. 1990); *see also* Pratt & Zeckhauser, *supra* note 292, at 17 (noting that "the agent and principal are merely two (or more) individuals (or organizations) in some sort of explicit or implicit contractual relationship").

294. Reuschlein & Gregory, *supra* note 293, at 32.

295. *See supra* part I.B.1 (describing a Name and the extent of a Name's liability, power and responsibility).

296. *See id.*

297. *See supra* note 30.

general, because the law of contracts binds only the contracting parties,[298] it may be argued—as it was by the Sixth Circuit in *Certain Interested Underwriters*—that since the underwriter is the only contracting party, he is the only one liable.[299] However, contract law, as it applies to agency relationships, is unique in that "the principal becomes a party to a contract made on his behalf by his agent only because of a concept peculiar to agency which ignores the rules of contract."[300] In this regard, courts have unanimously held that an undisclosed principal is a necessary and proper party.[301] "[B]ecause of the relation of agency, it has been invariably held that the undisclosed principal can sue and be sued upon the contract made on his account, if it was properly made for him by an agent."[302] As a result, under this analysis, the undisclosed principal has liability which exists in spite of the rules of contract.[303]

Contract law as it applies to agency contradicts the Sixth Circuit's decision in *Certain Interested Underwriters*. Although the *Certain Interested Underwriters* court relied on the substantive law of Tennessee[304] and general agency theory,[305] its analysis was incomplete because it only examined certain agency principles.[306] The court interpreted section 322 of the Restatement[307] to mean

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298. *See* Reuschlein & Gregory, *supra* note 293, at 15.

299. *See id.*

300. *Id.* at 163; *see also* Restatement (Second) of Agency § 186 (1958) (stating that an undisclosed principal, as well as the agent, is liable upon a contract made on his account by an agent acting within his powers). The undisclosed principal is equally as liable, under rules of agency law, despite the fact that the third party did not know of his existence.

301. *See* Reuschlein & Gregory, *supra* note 293, at 164 n.3 (citing Wahyou v. Kiernan, 302 P.2d 638 (1956); Armstrong v. Blackader, 118 So. 2d 854 (Fla. App. 1960); and, C.A. Karlan Furniture Co. v. Richardson, 324 P.2d 180 (1958) for cases where courts have held undisclosed principals a party to litigation).

302. *Id.* at 15; *see also* Randy E. Barnett, *Squaring Undisclosed Agency Law with Contract Theory*, 75 Cal. L. Rev. 1969 (1987) (discussing that standard contract theories are unable to explain the law of undisclosed agency).

303. *See* Reuschlein & Gregory, *supra* note 293, at 161.

304. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43 (6th Cir. 1994).

305. *See id.* at 43, 44.

306. *See id.* at 43 (stating that Tennessee follows the agency rule embodied solely in section 322 of the Restatement Second).

307. *See id.* "'An agent purporting to act upon his own account, but in fact making a contract on account of an undisclosed principal, is a party to the contract.'" *Id.* (quoting, in part, Restatement (Second) of Agency, § 322 (1958)).

that a party who deals with an agent representing an undisclosed principal "may sue *either* the principal or the agent, but not both."[308] The court held that since the defendants sued only the underwriters in their counterclaim, the citizenship of the Names was irrelevant.[309] Thus, the court disregarded the fact that the Names must be considered real parties because they had a substantive interest in the litigation.

In contrast, the Seventh Circuit in *Indiana Gas Co.* employed a more thorough analysis. For example, it examined other pertinent sections of the Restatement[310] which clarify the agency theory when undisclosed principals are involved.[311] When considering the Restatement (Second) of Agency in its aggregate, it is apparent that an undisclosed principal is equally as liable as a disclosed principal on a contract entered into by the agent.[312] "In determining whether a disclosed or partially disclosed principal is a party to a contract we look to the manifestations of the agent and third persons to one another."[313] Therefore, unless the principal of the agency relationship is specifically excluded by the terms of the agency agreement, then he is a party to the transaction.[314] In the situations involving Lloyd's, the Names were never excluded from any of the contracts made on their behalves. Similarly, the third parties with whom the underwriters contracted were well aware, because of Lloyd's history and the exorbitant insurance policies, that the underwriter was not acting on his own behalf, but for the entire syndicate. The Seventh Circuit, therefore, recognized that even if the Names were not particularly identified in the litigation, they were necessary parties who needed to be considered in the action.

The fact that the syndicate may take on the appearance of a partnership, or any other organization, is irrelevant; the Name,

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308. *Id.* at 43 (citing Holt v. American Progressive Ins. Co., 731 S.W.2d 923, 925 (Tenn. Ct. App. 1987)) (emphasis added).

309. *See id.* at 43, 44.

310. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 319 (7th Cir. 1998) (stating that "[w]hen the principal's interests are affected by the litigation, the principal's citizenship counts even if the agent is the sole litigant"); *see also* Restatement (Second) of Agency §§ 186, 302 (1958).

311. *See id.* (citing primarily to sections 186 and 302 of the Restatement (Second) of Agency).

312. *See* Reuschlein & Gregory, *supra* note 293, at 161.

313. *Id.* at 164.

314. *See id.*

undisclosed or not, is liable under agency theory and thus is a real party in interest.[315] "If inability to sue [the Names] personally means that their interests are not affected by the litigation, it would follow that no insured could rely on their promise or use their wealth to support the insurance agreement."[316] Consequently, the fact that Names cannot be sued directly under English law[317] is irrelevant to the determination that, in American courts, they are real parties in interest partly because their interests are affected by the litigation.[318] Due to the fact that the Names provide all of the assets which insure a policy and are subsequently severally liable on any losses, they maintain substantive interests in any litigation against their syndicate. Furthermore, it would be unfair to place the burden upon an insured, or any other person suing a syndicate, to discover the identities of all of the Names in order to sue each one of them. It is therefore logical that the Names cannot be merely nominal or formal parties but must be considered as real parties in interest whose citizenship is significant.

Accordingly, it is not a requirement for a third party to choose to sue either the Name or the underwriter. This specification by the Sixth Circuit places the duty on the insured to sue the Names, even if they were undisclosed principals, if the insured wants the Names to be a part of the litigation.[319] Of course, one may choose to sue the agent or the principals alone, but for the purpose of federal diversity jurisdiction, regardless of who is sued, all syndicate members are potentially liable.[320] This precondition implicated by *Certain Interested Underwriters* serves to preclude indispensable parties. It also allows parties to circumvent the diversity require-

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315. *See id.* at 15 (noting that an undisclosed principal can sue and be sued on a contract made on his behalf which would therefore qualify him as having a substantive interest and thus a real party to a controversy).

316. Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 319 (7th Cir. 1998).

317. *See id.* (noting that Lloyd's is organized under English law and that Names cannot be sued directly by the insureds under English law).

318. *See id.*

319. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 43, 44 (6th Cir. 1994) (recognizing that although an agent may make a contract on behalf of undisclosed principals, it is still the insured's duty to sue the principals separately if he wants them to be a part of the litigation).

320. *See supra* part I.B.1, 2 (describing the Names and syndicates, the role of the Names within the syndicate and stating that all Names are potentially liable for any losses because it is their wealth which endorses all of the deals).

ment by carefully structuring their litigation to include only diverse parties. The Sixth Circuit's holding, therefore, conflicts with the history and purpose of diversity jurisdiction.

Although Lloyd's may urge the courts to accept it as a corporation, the relation of agency exists within the organization. Therefore, on this basic principle alone, a disclosed or undisclosed principal can "sue and be sued upon a contract made on his account, if it was properly made for him by an agent."[321] Consequently, a Lloyd's syndicate should be assessed citizenship as an unincorporated association, whereby each member's citizenship will be considered for diversity jurisdiction purposes, unless there is some reason for Lloyd's to be an exception to that rule.

C. *Lloyd's as an Unincorporated Association*

Although it has been determined that a Lloyd's syndicate is organized under agency principles, it is necessary to assess whether this organization's citizenship is to be defined as that of an unincorporated association or whether it qualifies as an exception to that standard. An entity is only deemed to be incorporated when it has a legal personality so complete that it should be treated as its own, distinct entity.[322] One may argue that Lloyd's has some characteristics of a corporation.[323] As a result, the contention can be made that the partnership type arrangement that exists within Lloyd's—although traditionally like that of an unincorporated association—should be treated similarly to a corporation. However, Lloyd's does not qualify as a corporation per se because it is not legally incorporated and thus without a state of incorporation to attach citizenship. Similarly, regardless of Lloyd's corporate characteristics, it operates daily under the principles of agency. Lloyd's does not have a legal personality so complete to operate as its own entity because each Name must rely on an underwriter to transact any business on its behalf, and because

321. Reuschlein & Gregory, *supra* note 293, at 15.

322. *See* Wright et al., *supra* note 18, § 3630, at 693.

323. For instance, a Lloyd's syndicate is commonly known as "Lloyd's of London." More than one syndicate within Lloyd's often insures a risk and although each syndicate is separate per se, they all operate out of the Lime Street headquarters. The insurance policy is obtained by way of a Lloyd's broker who finds the syndicate to insure it.

"Lloyd's" as an entity does not accept liability for any of the syndicates' losses.

It may still be argued, as it successfully was in front of the Sixth Circuit, that Lloyd's should be treated as a corporation for diversity purposes. This is a compelling argument because Lloyd's falls neither under the rubric of a "traditional" unincorporated association,[324] nor as a standard, formal "corporation." Accordingly, in reaching a conclusion regarding Lloyd's citizenship, each of the aforementioned courts[325] were guided by *Carden v. Arkoma Associates.* *Carden* set some guidelines for qualifying an entity as an "unincorporated association"[326] and established that:

> [f]or purposes of the statute authorizing the federal courts to exercise jurisdiction based on diversity of citizenship (28 U.S.C.A. § 1332(a)), (1) diversity jurisdiction in a suit by or against *an artificial entity* other than a corporation depends on the citizenship of all the members of the entity; and (2) a court may not determine the citizenship of a limited partner solely by reference to the citizenship of its general partners, without regard to the citizenship of its limited partners.[327]

Most courts, including the Seventh Circuit and the various district courts previously discussed,[328] came to the conclusion that *Carden* reaffirmed that every entity without an independently es-

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324. *See supra* part II.B.3 (outlining all of the entities deemed to be "traditional unincorporated associations" by the courts).

325. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 41-42 (6th Cir. 1994); Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 317 (7th Cir. 1998).

326. *Carden* specifically held that a partnership, be it general or limited, along with any other entity that does not have corporate characteristics, has the composition of an unincorporated association. *See* Carden v. Arkoma Assocs., 494 U.S. 185 (1990).

327. Walter N. Jones, Jr., *Determination of Citizenship of Unincorporated Associations, For Federal Diversity of Citizenship Purposes, in Actions By or Against Such Associations*, 14 A.L.R. Fed. 849, 100 (Supp. 1999) (emphasis added) (citing Carden v. Arkoma Assocs., 494 U.S. 185 (1990)); *see also* Chapman v. Barney, 129 U.S. 677 (1889) (holding for the first time that unincorporated associations have no citizenship status of their own for federal diversity purposes).

328. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 317 (7th Cir. 1998); Humm v. Lombard World Trade, Inc., 916 F. Supp. 291, 294-94 (S.D.N.Y. 1996); Bath Iron Works Corp. v. Certain Member Cos. of the Institute, 870 F. Supp. 3, 5 (D. Me. 1994).

tablished, incorporated identity is to be treated as an unincorporated association.[329]

To this end, another argument can be made that Lloyd's, although not incorporated, is its own entity for which an exception should be made to treat it analogous to a corporation for diversity purposes. The United States Supreme Court discussed this general idea in *United Steelworkers of America v. R.H. Bouligny, Inc.*[330] In this case, the defendant was a labor union demanding treatment as a citizen for purposes of federal diversity jurisdiction.[331] The labor union removed the case to federal court, contending that diversity jurisdiction existed because it was a citizen of Pennsylvania and the defendant was a North Carolina corporation.[332] The North Carolina corporation argued that diversity did not exist because some labor union members were citizens of North Carolina and therefore diversity was destroyed.[333]

> But the District Court retained jurisdiction. The District Judge noted 'a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located.' Divining 'no common sense reason for treating an unincorporated national labor union different from a corporation,' he declined to follow what he styled 'the poorer reasoned but more firmly established rule' of *Chapman v. Barney*, 129 U.S. 677.[334]

However, on appeal the Fourth Circuit reversed the district court's decision that diversity existed.[335] The United States Supreme Court granted certiorari and affirmed the Fourth Circuit's decision.[336] The Supreme Court took this opportunity to con-

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329. *See Indiana Gas Co.*, 141 F.3d at 317; *Humm*, 916 F. Supp. at 294; *Bath Iron Works Corp.*, 870 F. Supp. at 5. *Compare* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39, 41 (7th Cir. 1998) (distinguishing *Carden* on the premise that a Lloyd's syndicate has a separate legal identity to qualify as a corporation).

330. 382 U.S. 145 (1965).

331. *See supra* note 160 and accompanying text (stating that a labor union is categorized as an unincorporated association and thus assessed no independent citizenship status).

332. United Steelworkers of America v. R.H. Bouligny, Inc., 382 U.S. 145, 146 (1965).

333. *See id.*

334. *Id.* at 146.

335. *See id.* at 146-47.

336. *See id.* at 147.

firm the general rule regarding unincorporated associations that responsibility lies with the legislature, and not the judicial branch, to make exceptions which would qualify an unincorporated association as a separate entity.[337] Ultimately, the court reluctantly applied the rule,[338] but also noted "that the contrary position to the general rule is 'appealing' and has 'considerable merit.'"[339]

The court also discussed that it would not be appropriate to characterize the union as an "exception" to the common law tradition of unincorporated associations, like the *sociedad en comandita* in *People of Puerto Rico v. Russell & Co.*[340] The *sociedad*, a creature of Puerto Rican civil law, was characterized as an entity having its own citizenship for diversity purposes because the local Puerto Rican law endowed the sociedad with "sufficient corporate characteristics so that it is just and sensible to treat them as corporations."[341] The union, in *United Steelworkers v. Bouligny*,[342] challenged the Supreme Court with the argument that it should also be regarded as its own distinct entity.[343] However, the Court affirmed that the ruling in *Russell* did not breach the doctrine of unincorporated associations because:

> in the *Russell* Case the problem presented was that of fitting an exotic creation of the civil law, the sociedad en comandita, into a federal scheme which knew it not . . . because, in the tradition of civil law, as expressed in the Code of Puerto Rico, the sociedad was consistently regarded as a juridical person.[344]

As a result, the Supreme Court held that the union was an unincorporated association and would be considered as such for the purpose of federal diversity jurisdiction.[345]

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337. *See id.* at 153.

338. *See* United Steelworkers of America v. R.H. Bouligny, Inc., 382 U.S. 145, 150-51 (1965).

339. Jones, *supra* note 327, at 852.

340. 288 U.S. 476 (1933).

341. Jones, *supra* note 327, at 854 (quoting United Steelworkers, 382 U.S. at 150).

342. 382 U.S. 145 (1965).

343. *See* United Steelworkers of America, 382 U.S. at 147.

344. *See* Jones, *supra* note 327, at 861-62 (citing United Steelworkers of America, 382 U.S. at 151).

345. *See* United Steelworkers of America, 382 U.S. at 149-50 (holding that it will not treat "an unincorporated labor union as a citizen for purposes of federal diversity jurisdiction without regard to the citizenship of its members").

Therefore, a similar exception, as that of the *sociedad*, cannot be applied to Lloyd's. Unlike Puerto Rican law, British law does not import any corporate characteristics upon Lloyd's, thus treating it as its own juridical entity.[346] British law, moreover, does not recognize Lloyd's syndicates as legal entities.[347] To this end, Lloyd's does not fall into any of the current "exceptions" and no further exceptions should be made because it would upset the structure of diversity jurisdiction and open the doors for future, undefined entities to also be categorized as corporations for diversity purposes. Accordingly, although there is a current circuit split regarding the citizenship status of Lloyd's for section 1332 diversity jurisdiction purposes, the *Bouligny* decision suggests: 1) the Supreme Court's unwillingness to increase the right of entry to the federal courts,[348] 2) it's deference to Congress to qualify an unincorporated association as its own entity,[349] and 3) its adherence to precedent to qualify an undefined entity as an unincorporated association.[350]

In light of the Supreme Court's holding in *Bouligny*, the Seventh Circuit in *Indiana Gas Co.* used a proper analysis to determine Lloyd's citizenship as an unincorporated association when it focused on the substance over the form of the Lloyd's syndicate.[351] The court recognized that British law[352] permits the underwriters to sue or be sued, but it also analyzed the manner in which Lloyd's

346. *See* Humm v. Lombard World Trade, Inc., 916 F. Supp. 291, 299 (S.D.N.Y. 1996) (indicating that its conclusion to treat Lloyd's as an unincorporated association is consistent with *Carden v. Arkoma Assocs.* because none of the syndicates is incorporated and because British law does not recognize them as such).

347. *See* Barry Ostrager & Mary Kay Vyskocil, *Modern Reinsurance Law and Practice* 750 PLI/ Comm 159, 180 (1997).

348. *See id.*

349. *See id.* at 150-51 (stating that "[w]e are of the view that these arguments . . . are addressed to the inappropriate forum, and that pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts").

350. *See id.* at 147-51 (describing the major cases which established the current rule for assessment of citizenship of a corporation versus an unincorporated association).

351. *See* Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 318-19 (7th Cir. 1998) (discussing that in form Lloyd's underwriters may appear to be liable because they resemble a trustee or represent "undisclosed principals," but in substance the underwriters are clearly representing interests of the Names who, even if undisclosed, are potentially liable).

352. British law is mentioned here because Lloyd's, in general, is governed by British law. However, as mentioned earlier, the substantive law which applies in

is organized.[353] The Seventh Circuit quite accurately noted that Lloyd's is essentially a hybrid because "the underwriting syndicates are unusual organizations, with some properties of general partnerships, some of limited partnerships, some of joint stock companies, and some of trusts."[354] The court's hybrid evaluation, however, did not allow for Lloyd's to be assessed a similar citizenship status as that of a corporation.[355] Primarily, this is because all of the organizations mentioned as part of the hybrid are actually unincorporated associations with different citizenship statuses than corporations, in that each of their member's citizenship "counts" for purposes of diversity jurisdiction.[356] Lloyd's citizenship, therefore, should be evaluated like any other unincorporated association. Lloyd's has the general unincorporated traits which distinguish it from a juridical entity.[357] In particular, Lloyd's possesses the qualities of a unified membership with unlimited liability of its members. Thus, in substance, Lloyd's is an unincorporated association.

More importantly, precedent demands that Lloyd's be distinguished as an unincorporated association.[358] The history of diversity jurisdiction demonstrates that the federal court system is unable to accommodate a greater access to the federal forum. Federal courts have limited jurisdiction. Unnecessary exceptions to common law precedent would therefore serve to defeat the central purpose of diversity jurisdiction: to allow a fair forum in a lawsuit

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federal diversity cases is the law of the state in which the action is brought or where the court presides. *See id.*

353. *See id.*

354. *Id.* at 317.

355. *See id.*

356. *See supra* note 160-67 and accompanying text (giving examples of all types of entities that, for citizenship purposes, have been defined as unincorporated associations).

357. *See supra* part II.B.3 (describing the traits which qualify an unincorporated association as such).

358. *See, e.g.*, Chapman v. Barney, 129 U.S. 677 (1889) (pioneering the rule that all entities, aside from corporations, are assessed citizenship in accordance to each of its members); United Steelworkers of America v. R.H. Bouligny, Inc., 382 U.S. 145 (1965) (finding that a union is an unincorporated association partially because Congress has not deemed it to be otherwise); Carden v. Arkoma Assocs., 494 U.S. 185 (1990) (finding that all organizations, besides legal corporations, are deemed to be unincorporated associations for diversity purposes).

amongst "diverse" peoples.[359] To this end, Lloyd's is still guaranteed impartiality and a "fair forum" if all of its members are completely diverse. Consequently, an analysis of a Lloyd's syndicate as an unincorporated association would provide for consistency with past decisions.[360]

A consistent, bright line rule must be maintained. The corporate/noncorporate dichotomy that has developed over the years must be applied strictly to future, undefined organizations.[361] To date, the Supreme Court has applied the diversity rules for corporations and unincorporated associations consistently and has not made exceptions of the sort that would need to be made here. The structure of Lloyd's does not provide a substantial reason for an exception. Lloyd's has the appearance of a corporation, yet it is fundamentally an unincorporated association. Thus, to declare Lloyd's as its own juridical entity would be to raise form above substance, contradicting a century long analysis of corporate and unincorporated associations. Although Lloyd's is a hybrid of corporate and unincorporated characteristics, history begs that it's citizenship be defined in line with unincorporated associations.

CONCLUSION

For purposes of diversity jurisdiction, a Lloyd's of London insurance syndicate should take on the citizenship of each of its subscribing members. The Sixth and Seventh Circuits arrived at two distinct conclusions when determining the proper real parties in interest in litigation involving Lloyd's of London. The Sixth Circuit decided that because the principals appear to be undisclosed, only the agent's citizenship is to be considered in a federal diversity jurisdiction action.[362] A second series of courts, including the Seventh Circuit, held that because an agency relationship exists

359. *See* Wright et al., *supra* note 18, § 3611, at 509 (giving a history of diversity jurisdiction and noting the general purpose of diversity jurisdiction is to provide a "fair forum"); *see also* part II.A. (explaining the history and purpose of diversity jurisdiction).

360. *See supra* notes 160-67 and accompanying text (referring generally to the Supreme Court's determination that other entities were to fall under the category of unincorporated associations).

361. *See* McCormack, *supra* note 3, at 524 (referring to *Chapman* for the establishment of the bright line rule for the citizenship of corporations and unincorporated associations).

362. *See* Certain Interested Underwriters at Lloyd's, London, Eng. v. Layne, 26 F.3d 39 (6th Cir. 1994).

within the syndicate, it is impossible to ignore the citizenship of all the members.[363] The latter courts come to this conclusion regardless of whether the principals are considered disclosed or undisclosed because each member had a substantive interest in the litigation.[364]

By applying the real parties in interest test to a Lloyd's syndicate, it is clear that all members of the syndicate have a substantial interest in any litigation because all members of the syndicate face potential liability. The general rule of unincorporated associations should be applied to a Lloyd's syndicate in federal diversity jurisdiction cases because it has the primary characteristics of other unincorporated associations. More importantly, general precedent, as well as the history and purpose of diversity jurisdiction, demands this conclusion because diversity jurisdiction will no longer serve its purpose of providing a "fair forum" if potentially anyone has access. Moreover, courts should be reluctant to carve out any "exceptions" because it is a legislature's role to alter the statutory rules regarding citizenship and federal diversity jurisdiction.

The proposed analysis—to treat a Lloyd's syndicate as an unincorporated association for 28 U.S.C. § 1332 diversity jurisdiction purposes—is well suited to the needs of our federal court system: to keep the access to the federal forum limited. An adverse position is not judicious because it would create inconsistency amongst general, unincorporated associations. Defining Lloyd's as a corporation for diversity purposes will encourage future, "undefined" entities to access the federal courts on Lloyd's coat tails. Additionally, current established unincorporated associa-tions will petition the courts to reconsider them as corporations. Finally, regardless of Lloyd's needs to access a fair forum, Lloyd's is organized under the principles of agency. Lloyd's does not conduct business as a corporation; it has no corporate-like statutory birth,

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363. *See, e.g.*, Indiana Gas Co. v. Home Ins. Co., 141 F.3d 314, 317 (7th Cir. 1998); Humm v. Lombard World Trade, Inc., 916 F. Supp. 291, 294 (S.D.N.Y. 1996); Bath Iron Works Corp. v. Certain Member Cos. of the Institute, 870 F. Supp. 3, 5 (D. Me. 1994).

364. *See, e.g., Indiana Gas Co.*, 141 F.3d at 318, 319 (addressing, in particular, the distinction made by the Sixth Circuit *Certain Interested Underwriters* court in regards to undisclosed principals and found that because an agent for an undisclosed principal is liable does not automatically mean that the undisclosed principal is released from liability).

no limitations on the liability of its Names and is organized under the principles of agency. These reasons mandate that Lloyd's be identified as an unincorporated association for diversity purposes.

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