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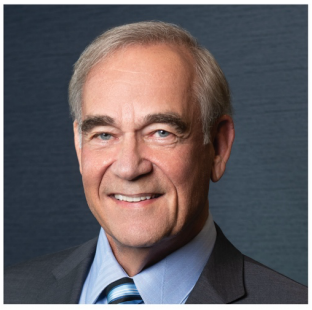
**Can Diversity Jurisdiction Be Established Through Judicial Notice?**

In a remote wilderness of federal procedure, rarely visited by practitioners, the Ninth Circuit recently had the opportunity to decide whether a district court could establish diversity of citizenship under 28 U.S.C. 1332 by judicial notice.

In *Rosenwald v. Kimberly-Clark Corporation*, 2025 DJDAR 9223, a purported class action originally filed in district court, the plaintiff filed a second amended complaint and declined to allege the citizenship of Kimberly-Clark. Interestingly, both defendant and plaintiff argued that plaintiff had adequately alleged Kimberly-Clark's citizenship through judicial notice. The parties claimed that the citizenship of Kimberly-Clark could be accurately and readily determined from online public records. Although that would be true with regards to the defendant's state of incorporation, it would not be correct with regards to establishing the corporation's "principal place of business" because: "Rarely can we 'accurately and readily determine [that information]' from sources whose accuracy cannot reasonably be determined."

The Ninth Circuit went deeper into its analysis and addressed whether diversity of citizenship could ever be established legally by judicial notice under circumstances where the defendant's principal place of business could be accurately and readily determined. The Ninth Circuit noted there is a split between the circuits. The Fifth Circuit allows a court to judicially notice a party's citizenship. *Swindol v. Aurora Flight Scis. Corp.,* 805 F.3d 516, 519 & n.2 (5th Cir. 2015). But the Tenth Circuit does not. *Buell v. Sears, Roebuch & Co.,* 321 F.2d 468, 471 (10th Cir. 1963).

The Ninth Circuit came down on the Tenth Circuit's side of the fence. The court wrote: "We agree with the reasoning of the Tenth Circuit. As we have held, '[t]he party seeking to invoke the district court's diversity jurisdiction *always* bears the burden of *both pleading and proving* diversity jurisdiction.' [citations omitted] Yet 'what may be judicially noticed need not be pleaded.' [citation omitted] If a 'court could take judicial notice of [a party's citizenship] there would be no necessity at all for alleging diversity of citizenship between corporate parties in Federal courts.'"



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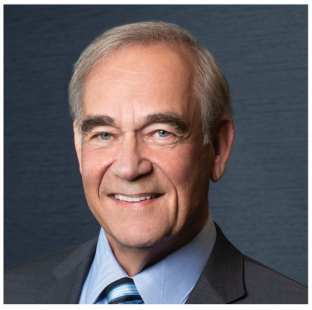
The Ninth Circuit pointed out its belief the Fifth Circuit was wrong because the "'burden of describing how the controversy exceeds [the jurisdictional threshold]' constitutes a 'pleading requirement, not a demand for proof.'" In other words, the Ninth Circuit disagreed with the Fifth Circuit's conclusion that it could rely upon FRE 201(b)(2) (the evidentiary judicial notice rule) to satisfy a pleading requirement.

*Rosenwald,* a lengthy opinion, is an interesting as well as complex read because it delves into many other nuances of federal law on diversity, particularly as they pertain to class actions. Happy reading!



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