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## Law firm's suit over legal fees goes to state court: U.S. judge

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Saying she was forced to follow precedent, a federal judge has held that the City of East Chicago must battle it out in state court with a law firm seeking fees it claims it is owed.

U.S. District Judge Rebecca R. Pallmeyer granted a motion by Morgan, Lewis & Bockius LLP to return to Cook County Circuit Court the suit that the firm filed against East Chicago.

Pallmeyer did say it would make more sense to try the case in federal court.

But Pallmeyer agreed with Morgan, Lewis — albeit reluctantly — that diversity jurisdiction was lacking and that East Chicago therefore improperly removed the suit from state court.

“The parties agree that for purposes of diversity jurisdiction, a limited liability partnership has the citizenship of all of its partners,” Pallmeyer wrote in an opinion made available Friday, citing *Carden v. Arkum Associates*, 494 U.S. 185 (1990), and *Cosgrove v. Bartolotta*, 150 F.3d 729 (7th Cir. 1998). “They agree, further, that East Chicago is a citizen of Indiana and that none of Morgan, Lewis’ partners are Indiana residents.”

Citing *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523 (1967), Pallmeyer also noted that the U.S. Constitution “requires only minimal diversity to support the exercise of the court’s jurisdiction — that is, diversity of citizenship between any two parties on opposite sides of the litigation.”

But Congress in 28 U.S.C. §1332 placed limits on jurisdiction, Pallmeyer continued.

Citing *Carden* and *Strawbridge v. Curtiss*,

7 U.S. 267 (1806), Pallmeyer said section 1332 requires “complete diversity” before diversity jurisdiction is deemed to exist.

And “complete diversity” means that “all parties on one side of the litigation must be diverse from all parties on the other side,” Pallmeyer said.

Quoting *Newman-Green Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989), Pallmeyer said “a natural person must both be a citizen of the United States *and* be domiciled within” a particular state in order to be considered a citizen of that state under section 1332’s definition.

“A United States citizen domiciled abroad lacks presence and is considered ‘stateless’ for the purposes of section 1332(a) and cannot satisfy diversity jurisdiction,” Pallmeyer wrote, citing *Newman-Green*. “Thus, if any one partner is stateless, the partnership itself is stateless for purposes of diversity jurisdiction.”

Pallmeyer said East Chicago’s argument for diversity failed because a Morgan, Lewis partner named Charles Lubar is a U.S. citizen who lives permanently in the United Kingdom.

“This court is bound by the law that directs a conclusion that Lubar’s stateless status destroys diversity jurisdiction over the partnership of which he is a member,” Pallmeyer wrote.

Pallmeyer said the 3d U.S. Circuit Court of Appeals made the same holding earlier this year in an unrelated suit brought by a plaintiff against his former employer and his former employer’s counsel, Morgan, Lewis.

The 3d Circuit held that “if a partnership has among its partners any American citi-

zen who is domiciled abroad, the partnership cannot sue (or be sued) in federal court based upon diversity jurisdiction,” Pallmeyer wrote, quoting *Swiger v. Allegheny Energy Inc.*, 540 F.3d 179 (3d Cir. 2008).

Pallmeyer did say she agreed with 3d Circuit Judge Theodore A. McKee’s suggestion in a concurring opinion that “stateless” parties should be treated as, in his words, “jurisdictional zeroes.”

McKee argued that the reason for allowing parties that might be the subject of bias in state court the opportunity to litigate in federal court “is not undermined one iota merely because one of Morgan, Lewis’ many hundreds of partners has been residing in England,” Pallmeyer said, quoting McKee’s concurring opinion.

But Pallmeyer said she had to grant Morgan, Lewis’ motion to remand its suit against East Chicago to Illinois state court.

“The court finds Judge McKee’s observations compelling,” Pallmeyer wrote, citing Currie, D., *The Federal Courts and the American Law Institute*, 36 U.Chi. L. Rev. 1 (1968). “Like the 3d Circuit, however, this court is bound by precedent.”

Pallmeyer issued her opinion in *Morgan, Lewis & Bockius LLP v. City of East Chicago*, No. 08 C 2748.

Morgan, Lewis is represented in the case by Chicago attorneys F. Thomas Hecht and Tina B. Solis, both of Ungaretti & Harris LLP.

The lead attorney for East Chicago is Robert Jon Feldt of Eichhorn & Eichhorn in Hammond, Ind. The city also is represented by Eichhorn attorneys David C. Jensen and Logan Courtney Hughes.