

## Where Is A Holding Company's Principal Place Of Business?

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Businesses often prefer to have their cases tried in federal court, but the U.S. District Courts are courts of limited jurisdiction. When there is no federal question at issue, the Court's jurisdiction may depend on whether there is diversity jurisdiction under 28 U.S.C. § 1332. That statute establishes original jurisdiction for civil actions when the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the action involves "diverse" parties. One type of diversity that will establish jurisdiction under the statute exists when the parties are "citizens of different states". The statute provides that "a corporation shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business." 28 U.S.C. §1332(c)(1).

But where is a corporation's principal place of business when the corporation is a holding company with few, if any, activities? The Ninth Circuit Court of Appeals answered that question earlier this week in *3123 SMB LLC v. Horn*, 2018 U.S. App. LEXIS 1121. The short answer is:

[A] recently- formed holding company's principal place of business is the place where it has its board meetings, regardless of whether such meetings have already occurred, unless evidence shows that the corporation is directed from elsewhere.

In reaching this conclusion, the Court of Appeals rejected the notion that a holding company's principal place of business is in the state where its officers reside. The Ninth Circuit said that such a rule ignores the Supreme Court's holding that a corporation's principal place of business "is a place within a State" and not the state itself. *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010). The Ninth Circuit also found such a rule to be unworkable because corporate decision-makers may live in more than one state ("How is a district court to choose among them?").

The lesson of this case is the question of where board meetings are held may be more than a question of the directors' convenience, it may determine whether the corporation can be sued in federal court.

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