

1st Circ. Offers Diversity Jurisdiction Lessons For Assignees

By **Ray Gauvreau** (November 25, 2025)

Practitioners know that in order to bring a diversity action in federal court, the amount in dispute must exceed the statutory minimum and there must be complete diversity of citizenship between the plaintiffs and defendants.

Assignments can complicate this analysis because Title 28 of the U.S. Code, Section 1359, provides in relevant part that "[a] district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made ... to invoke the jurisdiction of such court."



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An Oct. 16 opinion from the U.S. Court of Appeals for the First Circuit in *Gore and Associates Management Co. v. SLSCO Ltd.* serves as a cautionary tale about what can go wrong — dismissal after years of litigation — if an assignee invoking the jurisdiction of the federal courts has not alleged sufficient facts, or created a sufficient record, to demonstrate there is complete diversity between not only the parties to the action, but also between the putative assignors and parties on the counterparties to the assignee.[1]

Background

On July 6, 2019, the plaintiff *Gore and Associates* filed a diversity action in the U.S. District Court for the District of Puerto Rico against the defendant *SLSCO* and its surety, *Hartford Fire Insurance Co.*, for alleged breach of contract, failure to pay a third-party bond claim, and a payment bond claim under the Puerto Rican Little Miller Act.[2]

Specifically, *Gore* alleged that *SLSCO* failed to pay invoices submitted by *Gore's* nonparty subcontractors — *Earthwrx LLC*, *Uniify of Puerto Rico LLC* and *Uniify Strategic Business Solutions LLC* — under several federal contracts related to rebuilding projects in Puerto Rico and the U.S. Virgin Islands after 2017's Hurricane Maria.

In the complaint, *Gore* alleged that its subcontractors assigned their respective rights under the aforementioned invoices to *Gore*.

Preappeal Trial Court Proceedings

The defendants moved to dismiss on the ground that the plaintiff's action violated a valid contractual forum selection clause, for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and, in the alternative, sought a stay of any surviving claims pending completion of contractually mandated mediation proceedings, but did not challenge the court's subject matter jurisdiction pursuant to Rule 12(b)(1).

The trial court dismissed without prejudice certain subcontract-related claims, but refused to dismiss claims under two specific bonds and the Little Miller Act. The district court thereafter instructed *Gore* to file the dismissed claims in the appropriate forums and return to this case once those claims had been disposed. The case was then stayed. *Gore* sought reconsideration, leave to amend their complaint and to lift the stay, but the district court denied the requested relief and an appeal followed.

Diversity Issue Arises

On appeal, the First Circuit sua sponte noted that while the complaint alleged that Gore was assigned rights by Earthwrx and the Uniify entities, the record did not provide sufficient information to determine whether there was subject matter jurisdiction. As such, the First Circuit ordered the parties to provide supplemental submissions and specifically ordered Gore to provide information about the citizenship of each alleged assignor.

The parties complied with the First Circuit's order to file supplemental submissions.

Gore posited that the court had adequate diversity jurisdiction. In so contending, it represented that, upon information and belief, Earthwrx was wholly owned by 541 LLC, an Oregon limited liability company with a principal place of business in Oregon. Gore also represented, again upon information and belief, that Uniify of Puerto Rico, a Puerto Rican entity, was wholly owned by Uniify Strategic Business Solutions LLC, a Louisiana company. However, Gore did not submit any evidence to support its position.

Unsatisfied, the First Circuit remanded the case for jurisdictional fact-finding, specifically directing the district court to determine: (1) whether each individual subcontractor was completely diverse from the defendants and, if not; (2) whether the assignments to Gore were a collusive attempt to manufacture diversity jurisdiction in violation of Section 1359.

Remand Proceedings

On remand, the parties agreed to exchange written discovery and reserved the right to take depositions, but no party requested an evidentiary hearing and, instead, they opted to submit simultaneous briefs with accompanying evidence on the jurisdictional issues.

In support of the contention that diversity jurisdiction exists for Earthwrx, Gore submitted a certificate of formation, allowing the district court to find that Earthwrx was a Puerto Rican company and James A. Young and Bobby Owens were listed as authorized persons, administrators and members of the LLC.

The court determined that none of this information was helpful in assessing whether there was complete diversity between Earthwrx and the defendants.

More problematic was that this evidence contradicted Gore's prior submission to the First Circuit that suggested Earthwrx was solely owned by 541 LLC. No documentation was provided to the district court regarding 541 LLC.

While Gore did submit some additional public documentation obtained regarding property purchased by Earthwrx's members, it was plainly hearsay and unauthenticated. An email chain was also submitted, but there was no context for the statements therein, even though, according to Gore, its purported purpose was to show that the assignments were to consolidate claims, avoid unnecessary litigation costs and avoid inconsistent judgments.

As for the Uniify entities, the court was only able to determine that Uniify was created on Nov. 18, 2017; that Terry Bee was listed as the president, administrator and authorized person for the LLC; and that Uniify Strategic was determined to be an inactive Louisiana LLC that included Bee and Joseph P. Meyer as officers.

These findings once again conflicted with Gore's prior position before the First Circuit as it had previously reported that Uniify of Puerto Rico was wholly owned by Uniify Strategic,

which, according to the district court, militated against Gore's position.

As it had regarding Earthwrx, Gore submitted several additional documents that also ran afoul of the Federal Rules of Evidence in that they were inadmissible hearsay, unauthenticated, unreliable, speculative, inconsistent and simply not helpful to assessing diversity as of the date the action was filed.

Outcome

Given the foregoing, the U.S. District Court for the District of Puerto Rico was unable to accomplish the First Circuit's remand directive and could not analyze whether there was complete diversity between any of the alleged assignors-subcontractors and defendants — much less turn to the second question of examining the motive behind a particular assignment if there was not complete diversity between any particular assignor-subcontractor and the defendants.

The First Circuit held that this was fatal to Gore's suit because it bore the burden of demonstrating the validity of the assignments, as the party seeking to invoke diversity jurisdiction.

While Gore sought another remand to conduct additional discovery and seek an evidentiary hearing, the First Circuit refused to do so because Gore had already been given two opportunities to provide evidence of diversity and allowed seven months for the exact purpose of conducting discovery and seeking an evidentiary hearing. The case was dismissed.

Key Lessons for Assignees Seeking to Invoke Diversity Jurisdiction

If an assignee plans to invoke the diversity jurisdiction of a federal court, it cannot rely solely on the diversity of the parties to the action (if first filed in state court) or eventual action. Instead, the assignee ought to conduct a rigorous investigation into the citizenship of each and every assignor whose rights the assignee is asserting prior to bringing an action.

Furthermore, assuming an assignor is an LLC, it is incumbent on the assignee to investigate the citizenship of all members of such entity.[3] If the members of a particular LLC are themselves unincorporated associations, then a deeper, iterative investigation is required; the citizenship of any member must be traced through "however many layers of members or partners there may be," according to the First Circuit's 2023 decision in *BRT Management LLC v. Malden Storage LLC*. [4]

Assuming there is complete diversity of citizenship between the assignors and defendants, the assignee can — and should — allege that to guard against a court sua sponte raising an issue with subject matter jurisdiction midsuit or, worse, after years of litigation.

Better yet, an assignee ought to have evidence at its disposal to establish the citizenship of each assignor at the time the action is filed, which is the only date that matters because diversity jurisdiction is determined as of that date.[5]

A subsequent change in domicile for an assignor (or any party for that matter) will not defeat existence of diversity.[6] But an assignee should not have just any evidence — it should have evidence that would be admissible under the Federal Rules of Evidence to avoid authentication, hearsay or other admissibility problems.

Additionally, an assignee should be able to explain how each piece of evidence supports the diversity analysis. Failure to do so may lead to a court determining it has not been provided with sufficient evidence, which may very well be fatal if the assignee is the one attempting to invoke the diversity jurisdiction as it would bear the burden of establishing subject matter jurisdiction once raised.[7]

Should an opponent of assignment raise a Section 1359 challenge to the court's diversity jurisdiction, or if the court questions its subject matter jurisdiction, and the assignee is in the awkward position of not having sufficient information or evidence to make its showing, it ought to request sufficient time to conduct a rigorous investigation into the issues such that it is not in the position of having to rely on representations made on information and belief in the first instance and then later providing contradictory information or, worse yet, evidence.

Doing so will not help the assignee's credibility and could raise the specter of sanctions under Rule 11 of the Federal Rules of Civil Procedure.

Key Lessons for Nonassignee Opponents

Conversely, a nonassignee should investigate any assignment-related allegations or disclosures thoroughly. If the non-assignee has a good faith basis to suspect that diversity jurisdiction exists only as the result of an assignment, then it should alert the federal court to the potential jurisdictional defect.

This will force the assignee to provide the court with sufficient, admissible evidence that there was complete diversity at the commencement of the action and avoid an issue raised years later on appeal. If the assignee fails to do so, then the nonassignee ought to detail the deficiencies in the assignee's evidence and explain to the court how the assignee's burden has not been met.

A Note on the Presumption of an Invalid Assignment

If the district court on remand was unable to analyze whether there was complete diversity between any of Gore's assignor-subcontractors and the defendant (SLSCO) and its surety (Hartford Fire Insurance), that would have been the end of the analysis. However, if the district court determined that there was incomplete diversity between defendants and a particular assignor-subcontractor, then that assignment would have been presumptively ineffective for purposes of Section 1359.[8]

While rebutting this presumption is "likely to be difficult," it is incumbent on the assignee-party to prove that it was not made collusively by way of a "credible showing of a legitimate reason for the transfer" that was "unrelated to the fabrication of federal court jurisdiction," according to the U.S. Court of Appeals for the Eighth Circuit's 2004 opinion in *McCulloch v. Velez*. [9]

Given that credibility is in play to rebut this collusion presumption, live testimony likely will be advisable, if not absolutely necessary. Indeed, had the district court turned to the second question on remand, it telegraphed its displeasure with the documentary submission of an email that provided no context for the statements therein despite said email purporting to be evidence of a valid purpose for the assignments.

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[1] *Gore and Assocs. Mgmt. Co. v. SLSCO Ltd.*, --- F.4th ---, 2025 WL 2938795 (1st Cir. 2025).

[2] P.R. Laws Ann. Tit. 22, § 51.

[3] *BRT Mgmt. LLC v. Malden Storage LLC*, 68 F.4th 691, 696 (1st Cir. 2023) (internal quotation marks omitted).

[4] *Id.*

[5] *Bank One, Texas, N.A. v. Montle*, 964 F.2d 48, 49 (1st Cir. 1992).

[6] *Id.*

[7] E.g., *Woo v. Spackman*, 988 F.3d 47, 53 (1st Cir. 2021) (party who asserts jurisdiction bears burden of establishing that it exists by a preponderance of the evidence).

[8] *McCulloch v. Velez*, 364 F.3d 1, 6 (8th Cir. 2004).

[9] *Id.*