

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

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CAPTION: C. TR. GARDEN, ET AL., Petitioners V. ARKOMA ASSOCIATES

CASE NO: 88-1476

PLACE: WASHINGTON, D.C.

DATE: November 7, 1989

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 C. T. CARDEN, ET AL., :
4 Petitioners, :
5 v. :
6 ARKOMA ASSOCIATES :
7 -----x

No. 88-1476

8 Washington, D.C.

9 Tuesday, November 7, 1989

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 1:00 p.m.

13 APPEARANCES:

14 RICHARD K. INGOLIA, ESQ., New Orleans, Louisiana; on
15 behalf of the Petitioners.

16 MITCHELL J. HOFFMAN, ESQ., New Orleans, Louisiana; on
17 behalf of the Respondent.

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1 PROCEEDINGS

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this afternoon on No. 88-1476, C. T. Carden v.
5 Arkoma Associates.

6 Mr. Ingolia, you may proceed.

7 ORAL ARGUMENT OF RICHARD K. INGOLIA

8 ON BEHALF OF THE PETITIONERS

9 MR. INGOLIA: Mr. Chief Justice, and may it
10 please the Court:

11 The Fifth Circuit held that in determining the
12 presence or absence of diversity jurisdiction in a case
13 involving a limited partnership it would consider only the
14 citizenship of the general partners as being relevant to
15 the determination of that question. If the citizenship of
16 the general partners and that of the opposing parties was
17 diverse, the Fifth Circuit regards jurisdiction as having
18 been established.

19 They are wrong for several reasons. First, the
20 decision conflicts with the Supreme Court precedent in
21 Navarro and Great Southern. Second, instead of consulting
22 the appropriate state law, which in this case is Arizona,
23 it ignored that law, which is contrary to the Erie
24 decision.

25 And lastly, it ignored the interests of the

1 limited partners who owned 99 percent of the partnership
2 and in effect held that they had no interest in the
3 outcome of the suit.

4 Now, the rationale adopted by this Court in
5 Navarro pointed out that it had never made an analogy
6 between a trust and a business organization for the
7 purposes of diversity jurisdiction. That is what the
8 Fifth Circuit is doing here.

9 In addition, they did not take into
10 consideration the differences between a trust and a
11 limited partnership. Principally, in a trust 100 percent
12 of the legal ownership is vested in the trustees. The
13 beneficiaries have no legal ownership at all. In a
14 limited partnership, the general partners have only
15 management of the entity and that ownership which they
16 either pay for or earn by virtue of their services. They
17 do not own 100 percent of the assets of the partnership,
18 as do the trustees in an express trust.

19 And even the question of management in this case
20 was not entirely vested in the limited partners. Twenty
21 percent of the -- on the general partners, pardon me.
22 Twenty percent of the limited partners could prevent the
23 sale of the assets of the partnership and the limiteds
24 could also prevent the reinvestment in drilling rigs,
25 which were the only assets of the partnership. That

1 condition does not exist in the trust situation.

2 At least since the time of the decision in Great
3 Southern v. Jones, this Court has maintained that a
4 limited partnership's citizenship is determined by that of
5 all of the members of the partnership. There is no
6 distinction made on a jurisdictional basis -- on a
7 jurisdictional basis by distinguishing between the classes
8 of partnership.

9 QUESTION: Did the Fifth Circuit opinion treat
10 the Great Southern case at all?

11 MR. INGOLIA: No, sir, it did not. It based its
12 decision entirely on their decision in the Mesa case, Mesa
13 v. Louisiana Interstate Pipeline.

14 QUESTION: Did you cite the Great Southern in
15 your case -- in your brief to the Fifth Circuit?

16 MR. INGOLIA: Yes, we did, Your Honor.

17 The Fifth Circuit is apparently of the opinion
18 that -- imagine that this opinion arose from the Colonial
19 Realty Case decided in the Second Circuit, which was based
20 on Section 26 of the Uniform Limited Partnership Act. In
21 that case, Judge Friendly, I believe, as the argument of
22 the court, held that he would not consider the citizenship
23 of the limited partners because Section 26 of the Uniform
24 Limited Partnership Act provided that they were not proper
25 parties to a suit unless their own interests were before

1 the Court.

2 I think that conflicts with what this Court has
3 said in Navarro, particularly in its footnote 9 where it
4 compared the decision in United Steelworkers case to, I
5 believe it was Section 17(a) of Federal Rules. They
6 pointed out that while, yes, it's true that perhaps a
7 labor union may file suit in its name and it is a real
8 party at interest, but that's a question separate and
9 apart from diversity jurisdiction, determined based solely
10 on the membership of the union. It not having been
11 incorporated, the court concluded that it must consider
12 the citizenship of all members of the union in arriving at
13 a decision on the question of diversity jurisdiction.

14 One of the interesting things done in the United
15 Steelworkers case was this Court distinguished the earlier
16 Puerto Rico case where, in that case, a civil law,
17 sociedad en comandita, as they referred to it, was
18 considered to have jurisdiction of the -- of Puerto Rico
19 because it was created under Puerto Rico law -- Puerto
20 Rican law, rather.

21 In Puerto Rico, as in any other civilian
22 jurisdiction, a partnership is a juridical person and has
23 been for centuries. They would not extend that principle
24 -- or, this Court would not extend that principle to the
25 labor union case, because the labor union was not

1 something created under a system of law providing for
2 judicial -- juridical personality being vested in the
3 labor union.

4 I suggest that the same reasoning should apply
5 here. The partnership at issue is an Arizona partnership.
6 Therefore, it's a common law partnership and the Great
7 Southern case should cover that situation. It decided the
8 issue against diversity.

9 QUESTION: Is it clear that that business
10 organization under the Puerto Rican law was a -- was a
11 legal person?

12 MR. INGOLIA: Yes, Your Honor. I assume that
13 the laws of Puerto Rico are similar to those of Louisiana
14 and their common civilian heritage provides that a
15 partnership is a juridical person, as a corporation is.

16 That provision is absent in Arizona law. The
17 Arizona courts hold that a partnership is not a juridical
18 person; it's a collection of individuals. I suggest that
19 that is the law that should have been followed because the
20 court was sitting in a diversity case and it should have
21 felt itself bound by the Erie decision and its progeny.

22 It did not do so, but it did feel that it would
23 maintain the position that it had taken in the two
24 previous cases it had decided.

25 QUESTION: Do you mean you think it should have

1 -- that this decision would have been correct if the court
2 had been sitting in Louisiana?

3 MR. INGOLIA: No, sir, I do not. The court was
4 sitting in Louisiana, but it had to apply Arizona law in
5 determining the nature of the entity before it, an Arizona
6 limited partnership. It cannot apply the Louisiana law to
7 an Arizona partnership any more than an Arizona court
8 would apply Louisiana law.

9 QUESTION: So what you're saying is the case
10 would be different if you were dealing with a Louisiana
11 partnership?

12 MR. INGOLIA: Yes, sir.

13 QUESTION: Or if Arizona chose to denominate its
14 partnerships' legal entities?

15 MR. INGOLIA: Yes. I concede that.

16 QUESTION: Although even in that case, I
17 suppose, you wouldn't look to the citizenship then of he
18 unlimited partners. You would rather look to the
19 citizenship of --

20 MR. INGOLIA: Right. Of the --

21 QUESTION: -- the partnership.

22 MR. INGOLIA: -- as an entity, as you would
23 with a corporation.

24 QUESTION: Is it consistent with the Uniform
25 Limited Partnership Act that a limited partnership can be

1 a juridical person? Can a state enact the Uniform Limited
2 Partnership Act and then at its option either declare it a
3 juridical person or not?

4 MR. INGOLIA: I should think so, Your Honor. If
5 the legislature of the state chose to make a partnership a
6 juridical person, I should think it has that option.

7 QUESTION: There's nothing in the Uniform
8 Limited Partnership Act that speaks --

9 MR. INGOLIA: It does not do that.

10 QUESTION: -- to that issue one way or the
11 other?

12 MR. INGOLIA: I assume that the Uniform Limited
13 Partnership Act follows the class of common law and treats
14 partnerships as if they were collections of individuals,
15 as if they were contracts, as in fact they are.

16 QUESTION: Do many states in the United States,
17 or any other than perhaps Louisiana, treat a limited
18 partnership as a juridical person?

19 MR. INGOLIA: Not that I know of, Your Honor.
20 The only state that I'm aware of that treats a limited
21 partnership as a juridical person -- rather, any
22 partnership, not just a limited partnership, is Louisiana.

23 From what I've read of the Puerto Rican law,
24 they follow the same principle which, of course, I imagine
25 reflects a common history.

1 However, the common law decisions are to the
2 contract and every common law jurisdiction with which I'm
3 familiar treats a partnership as if it were simply a
4 contract in which several individuals bind themselves to
5 do certain things.

6 But in any case, I think since we are dealing
7 with a diversity case, the court should have turned to
8 state law, pertinent state law to determine the attributes
9 of the party before it. And if it had done that and
10 applied Arizona law, they would have seen that the
11 decisions in Arizona hold that partnerships are not
12 juridical persons if they are collections of individuals.

13 QUESTION: Suppose a bank has loaned some money
14 to a partnership that was organized and operating in the
15 same state as the bank and the bank then wants to collect
16 a debt from the partnership and in that state a
17 partnership is not a juridical entity. So you sue -- who
18 do you sue?

19 MR. INGOLIA: Well, first, you'd have to determine
20 --

21 QUESTION: It wants to -- who do you sue?

22 MR. INGOLIA: Well, you'd sue the partnership
23 and the partners if you expect it to execute a judgment
24 against the partners personally.

25 QUESTION: Well, suppose the partnership is in

1 -- suppose the bank loaned the money to a partnership in
2 another state and the partnership defaulted and you
3 brought a suit in the federal court. Who would you name?
4 Who would you name? All the partners?

5 MR. INGOLIA: Well, I think if you were in a
6 state where the local law permitted naming simply the
7 partnership, you would name just the partnership.

8 QUESTION: Yeah. All right. But, now, what if
9 you're in a state that you do not just name the
10 partnership?

11 MR. INGOLIA: Well, then you'd have to name them
12 all. But --

13 QUESTION: All right. What if it were a limited
14 partner -- partnership? You certainly don't name the
15 limited partners, do you ?

16 MR. INGOLIA: Well, if you want to execute a
17 judgment against them you certainly do.

18 QUESTION: Are they liable for the debts of the
19 partnership?

20 MR. INGOLIA: Not unless they assume personal
21 liability.

22 QUESTION: Well, that's -- so, let's just assume
23 it's an ordinary limited partnership; they haven't assumed
24 any personal liability.

25 MR. INGOLIA: Well, I think then the bank would

1 be limited to recovery out of the assets of the
2 partnership.

3 QUESTION: But they can't sue the limited
4 partners as persons, as individuals?

5 MR. INGOLIA: No, but that's --

6 QUESTION: Would that -- would that destroy --
7 could you bring a diversity action then --

8 MR. INGOLIA: Well, you'd have --

9 QUESTION: -- against them? Against the
10 partnership or against anybody there?

11 MR. INGOLIA: It would depend on the citizenship
12 of all of the partners. If all of the partners --

13 QUESTION: Even though -- even though the
14 limited partners -- you cannot get a judgment against the
15 limited partners?

16 MR. INGOLIA: Yes, I think so, because we're
17 dealing with two different things, standing to sue and --
18 and how do you determine the citizenship of this entity
19 before the court. I think those are two different things
20 and you can't confuse the two, and this Court
21 differentiated those two different things in its Navarro
22 decision in footnote 9 by its reference to the United
23 Steelworkers case.

24 In the United Steelworkers case, of course, the
25 plaintiff in that case tried to rely on the Puerto Rico

1 case, and the court clearly said we're not going to let
2 you do that here. And you're citing to us the --
3 juridical personality of a creature that we don't know
4 anything about. That's something these civilians do.
5 We're a common law system; we're going to decide this case
6 in accordance with the common law.

7 I think that reasoning leads you to Arizona and
8 how Arizona treats limited partnership or any kind of
9 partnership. When you do that, you find that Arizona
10 holds that they're not juridical persons.

11 QUESTION: You say, then, a plaintiff suing a
12 limited partnership, even though the plaintiff asserts no
13 claim against the limited partners -- even though he could
14 not recover against any of the limited partners still has
15 to name them all as defendants and they must all be
16 treated as separate defendants for diversity purposes?

17 MR. INGOLIA: He may not have to name them all,
18 depending on the local law. But a federal court in
19 determining whether or not diversity of citizenship exists
20 must test that by the citizenship of all of the members.

21 QUESTION: But why does that make sense, really,
22 if there is no possibility of any judgment against the
23 limited partners?

24 MR. INGOLIA: Well, that makes sense because it
25 fits into the scheme of jurisprudence that this court has

1 developed over the years.

2 QUESTION: That may be a reflection on the
3 scheme of jurisprudence.

4 (Laughter.)

5 QUESTION: In other words, you say that the
6 jurisprudence of the court does not differentiate on the
7 basis of whom you're seeking relief from?

8 MR. INGOLIA: No. The specific issue here was
9 the absence of Section 26 from the Arizona Limited
10 Partnership Act. They had repealed Section 26 so there
11 was no basis in Arizona law for making the distinction
12 between the limited partners and the general partners
13 based on the Limited Partnership Act of Arizona.

14 QUESTION: I don't understand that. Had -- had
15 that section still be in existence, what difference --

16 MR. INGOLIA: I don't think it would have made
17 a difference because, as this Court held in Navarro, you
18 test diversity jurisdiction based on the citizenship of
19 all of the members of an unincorporated entity.

20 QUESTION: Uh-huh.

21 MR. INGOLIA: There is no basis in the law for
22 treating a partnership as if it were a juridical person,
23 absent a provision in the law of its creation.

24 QUESTION: What does it mean to be a juridical
25 person? I mean, if you can --

1 MR. INGOLIA: Oh, a corporation is a juridical
2 person.

3 QUESTION: Well, I understand, but --

4 MR. INGOLIA: -- recognized as an entity
5 separate and apart from its members.

6 QUESTION: Well, this is in a way, too, isn't
7 it? I mean, if you say that the partnership can sue -- I
8 mean, the partnership here is suing in its own name,
9 Arkoma Associates. Judgment is rendered against -- would
10 rendered against it in its own name, would it, or in the
11 names of only the unlimited partners, the general
12 partners?

13 MR. INGOLIA: Well --

14 QUESTION: How would judgment be rendered?

15 MR. INGOLIA: I don't think it would be -- in
16 the sense that it was sitting in Louisiana, and by the
17 law of Louisiana a partnership can sue in its own name and
18 the judgment would be rendered against Arkoma. But Arkoma
19 is not a person separate and apart from its members. It's
20 simply a contract.

21 QUESTION: Well, let's assume suit isn't brought
22 in Louisiana, it's brought somewhere else. And you get a
23 judgment -- you can't get a judgment against Arkoma. Then
24 who do you get a judgment against?

25 MR. INGOLIA: Well, you'd get -- you'd get your

1 judgment, of course, against the partnership.

2 QUESTION: Against -- in its name?

3 MR. INGOLIA: Yes. But --

4 QUESTION: How do you execute that against the
5 general partners?

6 MR. INGOLIA: I'm sorry?

7 QUESTION: How do you execute that judgment
8 against the general partners?

9 QUESTION: I assume you would first execute
10 against the assets of a partnership and if that was
11 insufficient, you would execute against the general
12 partners.

13 QUESTION: So the judgment runs against the
14 general partners. By name or --

15 MR. INGOLIA: I would think so.

16 QUESTION: But only after a marshalling of
17 assets?

18 MR. INGOLIA: Yes. Yes, Your Honor, I believe
19 that's correct. That you would first satisfy the judgment
20 against the partnership assets and then against the
21 general partners.

22 But those considerations really are not
23 determinative of diversity jurisdiction. If we're going
24 to give effect to the jurisprudence of the court as it
25 presently exists, you turn to the citizenship of the

1 people who make up the partnership in deciding that issue.

2 QUESTION: Well, I suppose if you get a judgment
3 against the partnership, you'd first exhaust the
4 partnership assets I take it.

5 MR. INGOLIA: Yes, sir, I think you do.

6 QUESTION: And then you can -- if that isn't
7 sufficient, you can get a judgment against the -- levy
8 against the general partner?

9 MR. INGOLIA: Yes, sir. But meanwhile, in --
10 taking the partnership assets, marshalling them, you
11 certainly take any interest that the limited partners have
12 in the partnership?

13 MR. INGOLIA: Oh, yes. Certainly. Certainly.
14 That would --

15 QUESTION: So they're -- they're more than a
16 little parties in interest?

17 MR. INGOLIA: Certainly. Certainly.

18 QUESTION: And they have a property interest in
19 those partnership assets?

20 MR. INGOLIA: Oh, yes, sir. They own 99 percent
21 of the partnership assets. So, in any suit that the
22 partnership lost, 99 percent of the loss was theirs, not
23 the general partners.

24 So I think it's quite unrealistic to treat
25 limited partners as if they had no interest --

1 QUESTION: If the partnership --

2 MR. INGOLIA: -- in the partnership.

3 QUESTION: -- suddenly dissolved and they didn't
4 owe any debts or anything, the limited partners would get
5 99 percent of the assets?

6 MR. INGOLIA: That is correct, Your Honor.

7 QUESTION: Of course, you could say the same
8 about a corporation. In fact, you could say 100 percent.
9 That you shouldn't go by the state of incorporation of the
10 corporation but in point of fact 100 percent of the assets
11 are owned by stockholders who are all around the country.
12 And should it dissolve immediately, they would get all of
13 the assets. And realistically it's coming out of their
14 pockets if you get a judgment against the corporation.

15 MR. INGOLIA: Yes, Justice --

16 QUESTION: It doesn't seem to me that's very
17 persuasive. You could say that equally about a
18 partnership or a corporation. I mean, you know, who pays
19 the bill? It's ultimately going to be -- in the case of a
20 corporation -- the shareholder.

21 MR. INGOLIA: That's quite true. However, the
22 choice of form -- the form in which you are going to do
23 business as a business entity has consequences.

24 If you choose to do business as a partnership,
25 you should be willing to accept not just the advantages of

1 your choice, but you should also be willing to accept the
2 detriments.

3 QUESTION: I understand that when you're talking
4 about a normal partnership because, you see -- I guess
5 maybe I don't know what we mean by a juridical person. We
6 have sort of strange animal now, this limited partnership,
7 where in fact the judgment doesn't run against the limited
8 partners. It only runs against the juridical entity that
9 consists of the partnership assets as far as they're
10 concerned. And then, if that is insufficient, against the
11 general partners personally. But it never runs against
12 the limited partners personally.

13 And I don't know whether this is some -- maybe
14 this is a juridical person.

15 MR. INGOLIA: Well, it would have to --
16 juridical persons are creatures of legislation. They are
17 created by legislatures. They bring -- the statutes bring
18 them into existence because they have this quality known
19 as juridical personality. Certain facts and consequences
20 flow from that.

21 But that's not something different from anything
22 else that we do in the legal field. Every time we enter
23 into a contract to form a trust, to form a corporation,
24 we're making choices. And those choices have
25 consequences.

1 If they wanted to preserve a juridical
2 personality in this case, they could have formed the
3 partnership in Louisiana or Puerto Rico. It would have
4 had juridical personality. If that was what they were
5 interested in.

6 QUESTION: But maybe the only -- you're right
7 that those choices have consequences, but maybe the only
8 consequence that is relevant for purposes of the decision
9 we have before us today -- that is, whether diversity
10 exists or not -- perhaps the only consequence relevant is
11 whether you can be sued in your own name or not.

12 MR. INGOLIA: I don't think so, Your Honor. I
13 think there's a difference between suing in a name and the
14 citizenship of that name, whatever that might be. The
15 citizenship of a name is something acquired from a law,
16 from a statute, passed either by the Congress or a state
17 legislature.

18 That quality was not breathed into the limited
19 partnership in Arizona. And if we -- if we are going to
20 adhere to the Erie line of cases and the consequences
21 flowing from that, then we must turn to some source of law
22 to find out what it is that we're dealing with and what
23 kind of characteristics, including citizenship, that this
24 entity may have.

25 I think it's just that simple. It's likely to

1 vary from state to state. But that isn't a different
2 situation from any other diversity question in which the
3 Erie line of cases is at issue.

4 The -- probably the most extreme example of an
5 application of Erie that I can think of is Woods v.
6 Interstate Realty where this Court has held that a state
7 statute denying access to state courts was binding on a
8 federal court because the federal court was sitting in
9 diversity. That's a far more extreme example, I believe,
10 than what we have here before us.

11 All we're asking you to do here is to look at
12 the citizenship of the people who made up this entity and
13 draw conclusions from that based on your jurisprudence.

14 QUESTION: Judge Friendly certainly didn't agree
15 with you, did he?

16 MR. INGOLIA: No, sir, he didn't.

17 QUESTION: And he -- he didn't pass over Great
18 Southern.

19 MR. INGOLIA: No. He apparently felt that it
20 was dated.

21 QUESTION: He thought that --

22 MR. INGOLIA: But until --

23 QUESTION: He thought that because under New
24 York law the partnership --

25 MR. INGOLIA: Yes, sir.

1 QUESTION: -- the general partners couldn't be
2 sued -- couldn't sue or be sued unless -- except under
3 some --

4 MR. INGOLIA: Section 26. And Section 26 does
5 not exist in Arizona.

6 QUESTION: Do you think that would be enough, if
7 Section 26 did?

8 MR. INGOLIA: No, sir, Your Honor. I think that
9 --

10 QUESTION: I wouldn't think so.

11 MR. INGOLIA: I think that the controlling
12 decision is Navarro where this Court made the distinction
13 between the citizenship of a labor union and the question
14 of whether or not being able to sue in a name changed
15 that.

16 The Court held that the ability to sue in a
17 particular name had nothing to do with diversity, that
18 that would be determined from the citizenship of the
19 members, and in effect we urge that you -- you follow that
20 decision.

21 QUESTION: Thank you, Mr. Ingolia. Your time
22 will be reserved.

23 Mr. Hoffman.

24 ORAL ARGUMENT OF MITCHELL J. HOFFMAN

25 ON BEHALF OF THE RESPONDENT

1 MR. HOFFMAN: Mr. Chief Justice, may it please
2 the Court:

3 I will first, if I may, respond to a couple of
4 the questions that were raised in Mr. Ingolia's argument.

5 The first one was by Justice Rehnquist as to
6 whether or not the court of appeals, Fifth Circuit,
7 addressed the Great Southern issue. And not in our
8 particular case, but the initial case, Mesa operating
9 partnership, the Fifth Circuit did address the Great
10 Southern case and basically dismissed it on two grounds.
11 One, that it dealt with an old 1900s, 18 -- 19th century
12 limited partnership association that did not have separate
13 classes of members. That limited partnership association,
14 although deemed termed a limited partnership, is not the
15 same as the modern-day limited partnership that we have
16 today -- only one class of member.

17 Secondly, it was an old case and the Fifth
18 Circuit said that it would be applied only to those
19 particular entities.

20 So, yes, the Fifth Circuit has addressed the --

21 QUESTION: Yes, but may I just ask you. The
22 fact that it's been on the books since 1900, which way
23 does that cut?

24 MR. HOFFMAN: Well --

25 QUESTION: The law has apparently been settled

1 for 89 years until this Mesa case came along.

2 MR. HOFFMAN: Well, it was settled for the
3 limited partnership association that the court had before
4 it.

5 QUESTION: Well, does the opinion in the Great
6 Southern case say anything about the particular
7 characteristics of the limited partnership or does it say,
8 as I read it, corporations are an exception from the
9 general rule that everything else you look at the
10 individual citizenship?

11 MR. HOFFMAN: As I recall the case, it didn't
12 say that --

13 QUESTION: It doesn't even mention --

14 MR. HOFFMAN: -- we're only talking about --

15 QUESTION: It doesn't even mention the single
16 class of citizenship.

17 MR. HOFFMAN: Well, it doesn't, but then that
18 was the only thing before it at the time. So, unless the
19 Court was just out there looking for something to talk
20 about --

21 QUESTION: Well, it talked about a number of
22 other limited partnership cases that it cited and seemed
23 to think they were all -- you know, limited partnerships
24 are limited partnerships. It did not draw the distinction
25 that you say clearly distinguishes it is all I'm

1 suggesting.

2 MR. HOFFMAN: No, the court did not, sir. But I
3 think that just looking at the case and what the holding
4 of the case was it can only be applied unless you all
5 intend to --

6 QUESTION: Well, is it not true that people
7 generally -- lawyers generally for -- ever since 1900 have
8 assumed that in a limited partnership you look at the
9 citizenship of the whole -- of all partners?

10 MR. HOFFMAN: Well, I don't think that that's
11 entirely true, Your Honor.

12 QUESTION: At least three circuits have so held.

13 MR. HOFFMAN: Well, we have two on one side and
14 a couple on the other side.

15 QUESTION: Yeah.

16 MR. HOFFMAN: Judge Friendly in 1960 -- I think
17 it was '65 -- in the Colonial Realty case was the first
18 time the modern limited partnership was considered. And
19 when it came through the New York courts, the Second
20 Circuit, you know, they looked at -- the courts looked at
21 what they were dealing with. And they felt -- obviously,
22 I think -- they felt that there was a distinction between
23 the entity with which they were dealing in 1965 and the
24 entity which this Court dealt with in 1900. And I think
25 it was a valid distinction.

1 QUESTION: It was not exactly a tiny partner.
2 It was Jones and Laughlin Steel Company who was the party
3 in that case, wasn't it?

4 MR. HOFFMAN: In the Great Southern case. Yes,
5 sir.

6 QUESTION: Yeah.

7 MR. HOFFMAN: It certainly was.

8 QUESTION: What was the major difference between
9 the two?

10 MR. HOFFMAN: The two types of partnerships?

11 QUESTION: Right.

12 MR. HOFFMAN: In the modern-day limited
13 partnership you have two distinct classes of members. The
14 Uniform Limited Partnership Act adopted by 49 states --
15 and Louisiana adopted some but not inconsistent provisions
16 -- sets out a scheme of running the business. And that is
17 that you have one class of partners that control the
18 business of the partnership.

19 You have another class of partner that is simply
20 an investor. It does not -- that class does not have any
21 control function. It has no responsibility, no power
22 under any state law to perform any acts for the
23 partnership.

24 QUESTION: Okay. That's the modern partnership.

25 MR. HOFFMAN: Yes, sir.

1 QUESTION: How does that differ from the
2 partnership as described in Great Southern?

3 MR. HOFFMAN: In Great Southern, as I recall,
4 you had one class of limited partner. They were all
5 liable equally. They could all, with the exception of
6 some of their management functions which they by contract
7 -- not statute, by contract -- gave to the president, they
8 could participate. They had statutorily no restriction as
9 to what they could do for the partnership.

10 QUESTION: In what respect was it a limited
11 partnership then?

12 MR. HOFFMAN: They just called it a limited
13 partnership association back then simply, I think, because
14 they had this president who could bring an action on
15 behalf of the partnership.

16 QUESTION: All right. It must have been limited
17 in some respect. Wherein was it a limited partnership? I
18 don't understand it.

19 MR. INGOLIA: Your Honor, I can't recall all the
20 -- you know, all these facts of that case other than --

21 QUESTION: The opinion says it's authorized
22 pursuant to an act authorizing the formation of a
23 partnership and so forth in which the capital subscribed
24 shall alone be responsible for the debts of the
25 association except under certain limited circumstances.

1 So basically it was limited in the sense that
2 the partners did not have unlimited liability, which is
3 exactly what is true of the limited partners in a
4 two-class limited partnership today.

5 MR. HOFFMAN: Well, with one distinction. The
6 liability side, apparently, was limited back in the Great
7 Southern-type partnership and the modern-day partnership.
8 On the flip side, the responsibility and power side, that
9 responsibility was not limited back in 1900.

10 QUESTION: No, but the liability which is the
11 main --

12 QUESTION: How about the president? Didn't he
13 have some authority that the limited partners didn't have?

14 MR. HOFFMAN: By contract, yes. Yes, he did.

15 We have now, however, the Limited Partnership
16 Acts that have been amended a few times and now the most
17 recent amendment in 1985, you know, basically establishes,
18 as I indicated before, a very clear-cut distinction
19 between the two classes of partners. Again, one being in
20 control, one not being in control.

21 You cannot, no matter what you do as a limited
22 partner in a modern limited partnership -- you cannot
23 become a general partner. No matter if you assume more
24 responsibility than you're entitled to or you're supposed
25 to. The only penalty there is that you may lose your

1 limited liability status, but you cannot usurp the power
2 of the general partners simply by doing something you're
3 not supposed to.

4 And that's important for this reason. When you
5 look at real party to the controversy, as that term has
6 been used in Navarro and a number of other cases that
7 we've cited in our brief, the power of the partners, the
8 power of the individuals to act for the partnership to
9 control the business, to sue on behalf of the partnership,
10 is vested only in the general partners. And no matter
11 what the limited does, he can't take that power. He can't
12 take control and he can't usurp that power from the
13 general partners.

14 QUESTION: Is that the crucial power? I mean, I
15 suppose states could create all sorts of different limited
16 partnership laws allowing the general partners to have all
17 sorts of variance of powers. Which is the single crucial
18 power possessed by the general partner and not by the
19 limited partners which you think makes this a case
20 different from Southern?

21 MR. HOFFMAN: I would in -- I would say that
22 based on the real party to the controversy analysis, if
23 you're looking -- if you want an answer to that question
24 based on that type of analysis, the most important power
25 is the power to control the business of the association,

1 of the partnership.

2 You are the -- that person is the one who can
3 direct what happens to the partnership, can contract for
4 it, can bind it. The other people can't.

5 QUESTION: But you can have varying state laws
6 that say he can -- the general partners can do everything
7 except and then make a whole -- you can have all sorts of
8 different exceptions from state to state.

9 MR. HOFFMAN: Yes, you can. Now, they're pretty
10 well regulated for --

11 QUESTION: What about any contract more than
12 \$200,000? Would that be enough?

13 MR. HOFFMAN: Your Honor, I suppose you could,
14 the state legislature could do that. But they haven't
15 because we've got the Uniform Limited Partnership Act.

16 QUESTION: But if they should, we would have to
17 go through each individual state partnership law and
18 decide whether somehow or other the powers conferred only
19 upon the general partner are significant enough to come
20 within the principle that you're urging.

21 MR. HOFFMAN: That's a possibility, although I
22 think that the type of legislation that exists in the
23 Uniform Limited Partnership Act speaks against that and
24 will not cause that to be a concern, although I will -- I
25 will admit that any state legislature could do that.

1 QUESTION: Well, in Great Southern the president
2 had rights to conduct business, did he not?

3 MR. HOFFMAN: Yes.

4 QUESTION: So how do you -- you say it's -- is
5 the main distinction you see? Because it was by contract
6 there and it's by statute? That doesn't sound very
7 sensible.

8 MR. HOFFMAN: Well, it is and it isn't because
9 if you look at -- if you get into this analysis of
10 juridical person that Mr. Ingolia did, then it becomes
11 important whether it's statute or contract.

12 I think that for Great Southern the difference
13 between Great Southern and the modern-day limited
14 partnership is mostly involving the control and liability
15 and the access to the responsibility for the actions of
16 the partnership.

17 Yes, the president by contract was given certain
18 rights, but that did not foreclose the other what they
19 called limited partners since they were all limited
20 partners and they were all treated the same way -- that
21 would not foreclose these people from becoming more active
22 and doing something and be authorized by the state statute
23 to do that.

24 And I think that is the key because you have a
25 distinct class.

1 QUESTION: Supposing Louisiana -- this suit had
2 been against Arkoma -- is it Arkoma?

3 MR. HOFFMAN: Yes, Arkoma.

4 QUESTION: Arkoma Associates and the complaint
5 named the limited partners as well as Arkoma and all the
6 general partners, could you get the suit dismissed
7 against the general partners under -- without -- against
8 the limited partners?

9 MR. HOFFMAN: I think you could. First of all
10 -- and for several reasons.

11 QUESTION: Would it be kind of -- you know, in
12 New York Friendly said that under the law the limited
13 partners couldn't be sued in a case like this.

14 MR. HOFFMAN: Well, Louisiana --

15 QUESTION: Is that true in Louisiana?

16 MR. HOFFMAN: Well, essentially yes. The
17 partnership is the primary party. The general partners
18 are a secondary partner -- party under the Louisiana
19 Partnership Articles which are not the Uniform Limited
20 Partnership Act but kind of track it. They were not
21 really proper parties to the proceeding. They could be
22 dismissed, unless there are certain allegations that they
23 have gone beyond what the limited partner is permitted to
24 do. Only in that case would they be able to be
25 maintained.

1 I might point out to the court that in our
2 particular case, Arkoma was the Plaintiff. A counterclaim
3 was filed against Arkoma and the four general partners.
4 They didn't add the limited partners because obviously in
5 Louisiana you couldn't do that unless you wanted to make
6 an allegation that some of the limited partners, whom they
7 didn't even know, exceeded their statutory or
8 jurisprudential powers.

9 So I will say in Louisiana, of course -- and
10 that's obviously where the case was tried -- I might say
11 that --

12 QUESTION: Excuse me. You really have lost me.
13 Why -- why are we talking about the Louisiana Partnership
14 Act? This is --

15 MR. HOFFMAN: I was responding to Justice
16 White's question as to --

17 QUESTION: Well, but this is an Arizona --

18 MR. HOFFMAN: -- what would happen --

19 QUESTION: -- partnership we're talking about
20 here. You say that --

21 MR. HOFFMAN: Right. But for procedural
22 capacity to sue in the courts of Louisiana, Rule 17(b)
23 says look at the state law, look at the forum law. So we
24 were -- we were in Louisiana, we started there -- 17(a)
25 and 17(b). I think that --

1 QUESTION: Capacity -- capacity to sue include
2 -- is that right?

3 MR. HOFFMAN: Well, yes, sir. I --

4 QUESTION: If Louisiana said that the individual
5 shareholders of a corporation could be sued individually?

6 MR. HOFFMAN: Well, that's a different story
7 because that 1332(c) directly addresses corporations.
8 And, yes, Louisiana and I think all states have separate
9 statutes concerning the ability to sue a shareholder in a
10 corporate context. You have to make allegations of
11 piercing the corporate veil, usurpation of the corporate
12 psyche and things like that.

13 QUESTION: But you say in theory it doesn't
14 matter what kind of a partnership law Arizona enacts,
15 Louisiana can override it and allow partners to be held
16 liable?

17 MR. HOFFMAN: Oh, no. No, no. Not at all. All
18 I -- and that's a distinction that I think we may be
19 fudging over today. What we're talking about is
20 procedural capacity to sue under Rule 17. That is
21 completely different than your jurisprudential inquiry
22 with respect to the real parties to the controversy.

23 We cannot in Louisiana make a substantive rule
24 as to what the liability of those limited partners would
25 be without looking to the Arizona law. If I said anything

1 to suggest to the contrary, I'm sorry. But we are
2 strictly -- at least at this point in the argument -- only
3 talking about procedural capacity.

4 Now, this Court has held on many occasions, or
5 at least discussed in some of their cases, that you cannot
6 equate the procedural capacity to sue analysis with the
7 jurisprudential and jurisdictional argument of real party
8 to the controversy. And that they, although they may go
9 hand-in-glove, they're not necessarily the same.

10 I cite to the court the Boulogny case in '65
11 involving the labor union. There the labor union had
12 procedural capacity to sue but this Court said, no, we're
13 not going to give it jurisprudential -- I mean,
14 jurisdictional entity status. And I think that that
15 holding is limited to that particular type of argument.

16 We are not suggesting necessarily that this
17 court has to adopt an entity theory for limited
18 partnerships. We don't think that's necessary. I
19 personally think you should, but that notwithstanding that
20 is one option that's available to this court.

21 QUESTION: A real party in interest analysis
22 won't help you much, will it?

23 MR. HOFFMAN: Well, I think it will, Justice
24 White. And I -- the real party in interest, Justice --

25 QUESTION: Well, the limited partners stand to lose

1 their stake.

2 MR. HOFFMAN: Well, as did the trust
3 beneficiaries in Navarro.

4 QUESTION: Well, that maybe so. That may be so
5 but the limited partners stand to lose their stake.

6 MR. HOFFMAN: Yes, of course. And I don't think
7 that that should be the determining factor.

8 QUESTION: Well, they'd stand to lose the stake
9 in which they have an ownership interest.

10 MR. HOFFMAN: Well, not exactly because I think
11 -- if I can refer you back to your question a little while
12 ago, you said -- or you asked, do the limited partners
13 have an ownership interest in the assets, and they do not.

14 The partnership -- limited partnership -- is a
15 juridical person -- and I hesitate to use that word -- but
16 it is an entity that can own property according to the
17 state statutes. That entity owns the property. In this
18 case, the oil rigs, the drilling rigs. The entity owned
19 them. The limited partners simply are like shareholders;
20 they are equitable or beneficial owners of an interest in
21 this business that this business does own some property.

22 So, no, they don't have any of their direct
23 assets at stake except for their financial investment as a
24 shareholder, as any kind of investor has in a corporation.

25 And I liken this to, if you back up in time to

1 1957 before Congress enacted the revision of 1332(c) -- 28
2 U.S.C. 1332(c) -- that this Court -- it was a
3 jurisprudential decision that excepted corporations from
4 the general rule as to complete diversity.

5 And this Court back in 1840 and then affirmed in
6 1850 with the Letson case and the Marshall v. Baltimore
7 and Ohio Railroad case made a judicial extension of the
8 diversity jurisdiction argument by permitting corporations
9 to be treated as -- as entities.

10 Now, I submit that you could do the same at this
11 juncture, although I'm not saying that that is the best
12 way to handle this case.

13 I do believe consistent with the opinion in
14 Navarro where you look to the real parties to the
15 controversy and decided that the trustees in that case who
16 managed the litigation -- they held equitable title, they
17 had full control. The beneficial title, meanwhile, was
18 always in the beneficiaries and not in the trustees. And
19 I liken the limited partnership to that type of
20 organization.

21 QUESTION: Mr. Hoffman, unlike -- unlike the
22 Petitioner, you -- you assert that the limited partnership
23 is a juridical person?

24 MR. HOFFMAN: I'd say it doesn't matter. It's a
25 juridical person to the extent --

1 QUESTION: Well, just pretend that it matters.
2 Would you say that it is or that it isn't?

3 MR. HOFFMAN: Well, I would like to see it as a
4 -- limited -- as a juridical person.

5 QUESTION: I don't care what you'd like to see
6 it as. Do you believe it is or do you believe it isn't?

7 MR. HOFFMAN: Well, yes, I believe it is.

8 QUESTION: It is?

9 MR. HOFFMAN: I believe it is and I believe it
10 should be because it has so many characteristics similar
11 to a corporation that there's no reason to treat it any
12 differently?

13 QUESTION: What's the test of juridical
14 personhood?

15 MR. HOFFMAN: Well, that, again, is something in
16 the sociedad case, the Puerto Rico v. Russell case back in
17 1933, the court looked at all the qualifications and
18 characteristics of the sociedad and compared them to a
19 corporation and found that it's so very very similar to a
20 corporation and it also had this state with the Puerto
21 Rican sanction as an entity, and it said I'm looking at
22 all -- we're looking at all of those factors and we say,
23 yes, this will be treated as an entity just like
24 corporations.

25 Now, that you could do with limited

1 partnerships. And I would suggest that it could be done,
2 but then, again, I think the stronger position for this
3 Court consistent with the whole line of cases that have
4 come up over the years is to look at the real parties to
5 the controversy and see who they are.

6 And then it becomes a factual analysis which
7 this Court was willing to do in Navarro and say, okay, the
8 trust beneficiaries hold this, this and this powers. And
9 we're going to look at that, but we don't think that those
10 are the kind of powers you want to look to to decide
11 whether they are the real parties to the controversy.

12 Therefore, we're going to look at the trustees,
13 and we find all the requisite powers in the trustees that
14 are necessary to give this court the jurisdiction.
15 Because going way back to the Wormley case and the
16 McDutton case back in the 1820s this Court has
17 consistently held that we're going to look to the real
18 party to the controversy to decided jurisdictional
19 questions.

20 QUESTION: Arkoma here was the owner of these
21 rigs?

22 MR. HOFFMAN: Arkoma was the record, the title
23 owner to the rigs. Yes, sir.

24 QUESTION: And they -- the title was held in
25 their name?

1 MR. HOFFMAN: In Arkoma's name. Yes, sir.

2 QUESTION: Yeah. And the lease was by Arkoma?

3 MR. HOFFMAN: Yes, sir. I mean, Arkoma had to
4 appear through an individual --

5 QUESTION: Yes.

6 MR. HOFFMAN: -- as a corporation would have to
7 do.

8 QUESTION: Yes.

9 MR. HOFFMAN: But, yes, for all -- for other
10 than diversity jurisdiction purposes, Arkoma is certainly
11 a juridical person because that entity could and did in
12 fact own assets and contracted with various people,
13 including Petitioners for benefit and for -- to conduct
14 its business.

15 So, other than the juridical person idea comes
16 up I think in a faulty context because nobody has ever
17 really asked this Court to assume or to hold that for
18 diversity jurisdiction purposes this limited partnerships
19 or all limited partnerships should be -- should be
20 considered an entity.

21 If I may get back just one bit to the Navarro
22 case, I find it odd that this Court would put its entire
23 holding in a footnote. If this Court intended to say that
24 the Navarro analysis of real parties to the controversy
25 was not to apply to any other entity, I would believe that

1 you'd put it in the main part of the decision as opposed
2 to a footnote 9 which simply says that we have never up
3 until now analogized the limited partner -- or the
4 business trust to other forms of business entity. It
5 didn't even mention limited partnership.

6 Justice Blackmun, on the other hand, in the
7 dissent, indicated that he found it troublesome that the
8 Court didn't take the affirmative step and say, hey, this
9 is just like a limited partnership; this is just like
10 other business entities that are out in the commercial
11 world in the 1980s and say take the bull by the horns and
12 decide the issue.

13 Well, the issue wasn't exactly in front of the
14 Court at that time because you were dealing with a
15 business trust. But I dare say the analysis -- the five,
16 eight pages of analysis -- that you went through would --
17 would not have been necessary had it not been for an
18 opinion of this court or a feeling of this court that the
19 real party to the controversy analysis ought to be
20 maintained.

21 And I say that because in that Navarro case, a
22 case of Chappadulane, I think -- and I may be
23 mispronouncing it -- back in 1808 firmly held that that
24 trustees of a trust were the real parties and the
25 citizenship of those trustees were the ones -- was the

1 citizenship that counted. So you wouldn't have had to go
2 through a difficult analysis if you were simply going to
3 rely on that old case.

4 Obviously, it seems to me that because the
5 discussion went on that you did feel that the real parties
6 to the controversy analysis ought to be maintained at
7 least now and then left open for discussion for future
8 cases, which I think this case is the prime or a very
9 decent case to look at it.

10 Now, we're not asking this Court to interpret
11 the Constitution. That has been clearly -- clearly
12 settled. The diversity jurisdiction statute is what's
13 involved; it's not Article III of the Constitution.

14 So I think in the case -- your recent case in
15 June of this year, Newman Green, you had a footnote in
16 there saying that it's not a constitutional argument. So
17 we're not asking you do to anything --

18 QUESTION: I would think you would -- according
19 to your argument, you would say that the -- you would say
20 that the citizenship of the general partners isn't
21 relevant also. You just go by the name of the --

22 MR. HOFFMAN: Well, I have two arguments. Yes,
23 Justice White. If you're going to look at the entity
24 theory, which I am not -- that's not my principal argument
25 -- yes, I'd say you look at the principal --

1 QUESTION: I thought -- I thought you said the real
2 party in interest was the partnership. They own the
3 property.

4 MR. HOFFMAN: They -- they very well could be.
5 But I'm suggesting there are two alternate ways to look at
6 --

7 QUESTION: But we don't need to go that far you
8 said?

9 MR. HOFFMAN: Pardon me?

10 QUESTION: You don't need to go that far?

11 MR. HOFFMAN: Well, you wouldn't. But, you
12 know, I looked at the Bouligny case in 1965 and this Court
13 said specifically, we're not going to create any new
14 entities. At least, that's how I read it.

15 So I don't want to ask you to do something that
16 you didn't want to do back in 1965.

17 QUESTION: I know, but you say -- you say that
18 the limited partners don't have any interest because title
19 in the property is in this entity.

20 MR. HOFFMAN: I don't say they have no interest.
21 They are not the real parties to the controversy that's
22 involved. The people who manage, the people who control,
23 the people who operate this business as a corporate board
24 of directors, you know that -- those people, that is the
25 real party. Whether it's the entity or whether it's the

1 general partners because keep in mind the distinction --

2 QUESTION: Well, the general partners don't own
3 this property.

4 MR. HOFFMAN: No. But keep in mind, the
5 distinction has to be made between the corporation -- one
6 of the differences between a corporation and a limited
7 partnership is that you have this class of partner who are
8 or who is responsible for the debts of the partnership,
9 the general partners.

10 So they do -- you know, there's an intermediate
11 step between your board of directors, say, and your
12 shareholders in the corporate context from your
13 partnership, your general partners, to the limited
14 partners. The limited partners are no different than your
15 shareholders.

16 And prior to Congress in 1958 saying that we're
17 not going to consider the shareholders and we're going to
18 create or we're going to consider corporations as
19 entities, this Court made that determination, and I think
20 this Court can do so now with respect to limited
21 partners.

22 QUESTION: And say that for diversity purposes
23 they are governed by the citizenship of the general
24 partners?

25 MR. HOFFMAN: Well, under the entity theory you

1 would say, just like a corporation, that it's the
2 principal place of business or the state of incorporation
3 or state of formation. That would be the entity theory.

4 QUESTION: Yes.

5 MR. HOFFMAN: That's how you would argue that.

6 On the flip side, if you say, no, we're not
7 going to create any new entities, we're going to look at
8 real parties to the controversy, yes, then it's the
9 general partners who are the real parties to the
10 controversy because they are alone that class of partners,
11 the class of people within this partnership who control,
12 manage and conduct the litigation.

13 QUESTION: But do they lose any more by a
14 judgment against the partnership than the limited partners
15 do?

16 MR. HOFFMAN: Indeed they do because they are
17 responsible. They are liable to the full extent of
18 partnership obligations. The general are, not the
19 limiteds. So they could get hit -- for instance, if
20 petitioners were successful, which they were not, on their
21 counterclaim for some millions of dollars, the general
22 partners would have had to respond.

23 QUESTION: Yes, but what if --

24 MR. HOFFMAN: The limiteds would not.

25 QUESTION: What if the amount of the judgment

1 exactly equal to the partnership assets?

2 MR. HOFFMAN: Pardon me? What if it was?

3 QUESTION: Uh-huh.

4 MR. HOFFMAN: If that was the case, then,
5 fortunately for the general partners, they would be okay.
6 But --

7 QUESTION: And then unfortunately for the
8 limited partners, they wouldn't.

9 MR. HOFFMAN: Well, everybody would have lost
10 their investment, yes.

11 QUESTION: Exactly.

12 MR. HOFFMAN: Everybody would have lost. But I
13 might point in this particular case the value of the rigs
14 in an oil recession is not great.

15 QUESTION: Yes. Yes.

16 MR. HOFFMAN: And so they --

17 QUESTION: Up to the extent of the partnership
18 assets the limited partners are at risk?

19 MR. HOFFMAN: Yes.

20 QUESTION: Just like the --

21 MR. HOFFMAN: Yeah, like any investor. Like a
22 corporate shareholder.

23 QUESTION: But no more and no less so than the
24 generals?

25 MR. HOFFMAN: Up to the value -- well, yes, up

1 to the value.

2 QUESTION: Your real argument --

3 MR. HOFFMAN: When it goes beyond the value,
4 then the generals have more to lose.

5 QUESTION: I think your real argument is that
6 the limited partnership should be treated like a
7 partnership with respect to only the general partners.

8 If we just had a regular partnership, not a
9 limited partnership, --

10 MR. HOFFMAN: Yes?

11 QUESTION: -- we would use the citizenship of
12 the partners, right?

13 MR. HOFFMAN: Because they would all be general
14 partners and all have the same rights, responsibilities
15 and powers.

16 QUESTION: And in Great Southern we were
17 confronted with the choice of either -- since they were
18 all limited partners, we had to allow you to look to the
19 citizenship of all the partners, or the only alternative
20 was to create a new entity.

21 MR. HOFFMAN: Yes, sir.

22 QUESTION: Which we refused to do. And you say
23 here we're not faced with that stark alternative. We
24 could go halfway and say instead of creating a new entity
25 we're just going to treat the general partners like a

1 partnership.

2 MR. HOFFMAN: Yes. Similar to the analysis
3 with the business trust in Navarro, you're going to look
4 to the people who control. And we may argue as to who
5 controls.

6 QUESTION: Well, I wouldn't say -- why the
7 people who control? The general partners, just like the
8 partners in a partnership. I don't think you look to a
9 partnership to see how many of the partners act -- I mean,
10 the partners could contract one with another that one of
11 them will do all the management. We wouldn't alter our
12 citizenship requirements, would we, simply because one of
13 the partners in an ordinary partnership is a managing
14 partner? I don't think so.

15 MR. HOFFMAN: No, you wouldn't. But it would be
16 the similar analysis that each of those general partners
17 has the same power. But you wouldn't have to get there
18 under your scenario.

19 Now, we're not asking this Court to overrule the
20 Strawbridge case back in 1806, Chapman v. Barney which
21 involved a joint stock association, or the Great Southern
22 case because I believe that the Great Southern case and
23 those other cases, although they dealt with unincorporated
24 associations, as that term can be broadly defined, did not
25 deal with the entity or the type of business organization

1 that we are dealing with today.

2 I think that it could be very well
3 distinguished. The Fifth Circuit made the distinction
4 that --

5 QUESTION: It could be distinguished on the
6 ground that it's more like a corporation than the one we
7 have today.

8 MR. HOFFMAN: Which one?

9 QUESTION: Great Southern.

10 MR. HOFFMAN: Well, I don't -- I don't believe
11 so. I think Great Southern was less like a corporation
12 than the --

13 QUESTION: Well, what's the difference between
14 it and a corporation?

15 MR. HOFFMAN: Well, the corporation, of course,
16 has statutory board of directors authority and what not.
17 The Great Partner -- the Great Southern Limited
18 Partnership Association, as it was then called, I think
19 was just simply a contract between the people allocating
20 some responsibilities. But all the limited --

21 QUESTION: With the same kind of limited
22 liability the shareholders of a corporation have.

23 MR. HOFFMAN: Yes, right. To that extent it is.

24 QUESTION: Yeah. Whereas there's no -- whereas
25 in the modern limited partnership somebody has unlimited

1 liability.

2 MR. HOFFMAN: Yes, sir.

3 QUESTION: So in that respect it's --

4 MR. HOFFMAN: Okay. There is a distinction in
5 that respect.

6 Now, the term, the operation of the modern-day
7 limited partnership, I think tracks very closely with the
8 operation of corporations, particularly when you get into
9 these master limited partners -- partnerships that are
10 created and sold on the public market where you've got
11 thousands of shareholders where you don't really care who
12 the other limited partners are, you just purchase -- you
13 invest in this business operation and you've got
14 essentially a board of directors, i.e., the general
15 partners, controlling the whole -- the whole works.

16 And I think that whatever rule you decide today
17 has to be applicable to not only the partnership that we
18 have in question, which is a 44-member limited partnership
19 with only one Louisiana limited partner. And but it would
20 be applicable to these mass of master limited partnerships
21 that could cause, you know, a pretty big stink in the
22 securities industry.

23 You know, I'm not suggesting that the people
24 invest in these master limited partnerships simply to use
25 diversity jurisdiction. Not at all. But it would be

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1 unfair to preclude the master limited partnerships from
2 diversity jurisdiction because in all likelihood you'll
3 never be able to get diversity if you're a member of one
4 of these master limited partners.

5 QUESTION: No, but to the extent you rely on
6 securities problems, you get federal quest in
7 jurisdiction, I suppose.

8 MR. HOFFMAN: Well, if it's a question within
9 the partnership itself. But if it's a simple debt or
10 creditor relationship where the partnership is a debtor,
11 then the security problems really don't come into play.

12 And I might say that diversity of jurisdiction
13 is still here. Some people don't like it, but we still
14 have it and we have to live with it and I dare say that in
15 my practice in south Louisiana and in southern Texas I
16 will always file in federal court with an out-of-state
17 plaintiff and I will always remove with an out-of-state
18 defendant in any of those state courts over there.

19 It may be awhile since any of you have tried
20 something down there, but I can tell you that there is a
21 reason for diversity jurisdiction still existing.

22 (Laughter.)

23 QUESTION: It's called home cooking.

24 MR. HOFFMAN: Well, it's been called worse.

25 (Laughter.)

1 MR. HOFFMAN: I might point out -- I see I'm out
2 of time. Thank you, Your Honors.

3 QUESTION: Thank you, Mr. Hoffman.

4 Mr. Ingolia, you have two minutes remaining.

5 REBUTTAL ARGUMENT OF RICHARD K. INGOLIA

6 ON BEHALF OF PETITIONERS

7 MR. INGOLIA: Thank you, Your Honor.

8 The problem with the Fifth Circuit's decision is
9 you can't tell who is in control. Someone who appears of
10 record as a limited partner may very well be the managing
11 controller of the business. And someone from the outside
12 looking in with nothing but the record to look at doesn't
13 know that.

14 To -- if we're going to consistently apply the
15 Fifth Circuit's test, then we're going to have an enormous
16 amount of in limine litigation and discovery to determine
17 who among the limited partners, if any, have engaged in
18 the management of the partnership. If that --

19 QUESTION: I agree that control is pretty bad.
20 It's sort of hard to figure out who has how much. But
21 what about a test that says, look, what we're confronted
22 with is an animal that is in between a partnership, a
23 regular partnership in which there's unlimited liability
24 on the part of all of the partners and a limited
25 partnership of the sort that was involved in Great

1 Southern in which there was no personal liability on -- on
2 behalf of any of the partners.

3 Here you have one right in the middle. You have
4 some of the partners who have personal liability and
5 others who don't. So the choice is whether you treat it
6 -- you know, which way do you flop.

7 And why can't you say so long as you have some
8 partners who have unlimited personal liability you'll
9 treat it as a partnership involving those partners?

10 MR. INGOLIA: Well, that's certainly an
11 argument, Justice Scalia. However, if simplicity of
12 operation in the administration of justice is a test,
13 following the current jurisprudence of the Court is a far
14 simpler matter than trying to delve into these questions
15 of who among the 44 limited partners may have involved
16 himself in management, if he did. I don't see how even
17 under Mr. Hoffman's test you can ignore that.

18 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
19 Ingolia.

20 The case is submitted.

21 (Whereupon, at 2:00 p.m., the case in the
22 above-entitled matter was submitted.)

23

24

25

CERTIFICATION

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No. 88-1476 - C.T. CARDEN, ET AL., Petitioners V. ARKOMA ASSOCIATES

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BY

Lena M. May

(REPORTER)