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Diversity Jurisdiction and the Unintended Consequences of Remote Employees

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Corporations choose where to incorporate and maintain a principal place of business for many reasons; regulatory climate, availability of resources and a trained labor force, and logistics are just a few common considerations. Another increasingly common consideration is litigation risk. All things being equal, for instance, most corporations will prefer to avoid incorporating or maintaining principal places of business in jurisdictions known for sizeable jury awards against corporate defendants. But what corporations might not realize is that their best-laid plans can be upset by executives' remote-work arrangements.

In *Evans v. Cardlytics, Inc.*, for example, two California-based plaintiffs filed suit against their former employer in a California state court. No. 8:23-cv-00606-JWH-KES (C.D. Cal. Nov. 7, 2023). The defendant removed the suit to the Central District of California on the basis of diversity jurisdiction, alleging that it was incorporated in Delaware and maintained its principal place of business in Georgia. The plaintiffs moved to remand, however, on the grounds that the defendants' principal place of business was not in Georgia, where the defendant maintained its corporate offices, but rather in California, where several of defendants' officers resided and worked remotely.

The Central District of California granted the remand motion. It found that four of the defendants' seven officers were residents of California. And while the court was persuaded by the numerical majority of the defendant's officers, even more so, the court was particularly persuaded by the roles filled by those four officers: chief executive officer, chief operating officer, chief technology officer, and chief product officer. Comparing a corporation's principal place of business to its "brain," the court likened the CEO and COO to its "prefrontal cortex and hippocampus, *i.e.*, the parts most responsible for decision-making." *Id.* at *7.

The *Evans* court's reasoning and conclusion offer at least two lessons for practitioners. First, counsel advising corporate clients should consider the jurisdictional implications of remote-work arrangements for corporate executives. And second, neither plaintiffs' counsel nor defense counsel should take a corporation's identification of its principal place of business at face value. In an environment where remote work is increasingly prevalent,

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the facts might support or defeat diversity jurisdiction in unexpected (and perhaps unintended) ways.