

March 7, 2016

**Supreme Court Looks to Citizenship of Shareholders of Maryland Title 8 REITs
to Determine Diversity of Citizenship for Access to Federal Courts**

The Supreme Court ruled today that the citizenship of a Maryland Title 8 real estate investment trust (a “trust REIT”) that seeks access to the federal courts based on diversity-of-citizenship jurisdiction must be determined by looking to the citizenship of the shareholders. In an 8-0 decision, Justice Sotomayor writing for the Court held that the federal statute for diversity of citizenship as applied to a corporation, which looks to the state where the corporation’s principal place of business is located and the state under the laws of which the corporation is incorporated, does not apply to unincorporated entities. [*Americold Realty Trust v. Conagra Foods, Inc., et al.*](#)

The effect of this decision will be to deny most widely-held trust REITs access to the federal courts on the grounds of diversity of citizenship of the parties to the litigation because it is likely that their shareholders will be citizens of many, perhaps all, states, including the states where the opposing party or parties are citizens. The right of a trust REIT to access federal courts based on a federal question arising under the Constitution, laws and treaties of the United States is not affected. For example, the jurisdiction of a suit by or against a trust REIT under the federal tax, securities, antitrust or environmental statutes would not be affected. It is only where a trust REIT seeks to assert or defend a non-federal claim in federal court that it will not be able to do so if even a single shareholder is a citizen of the same state as one of the opposing parties.

The National Association of Real Estate Investment Trusts filed an *amicus curiae* brief with the Court, in which we participated as co-counsel. Justice Sotomayor acknowledged NAREIT’s brief but said: “We also decline an *amicus*’ invitation to apply the same rule to an unincorporated entity that applies to a corporation – namely, to consider it a citizen only of its State of establishment and its principal place of business. See Brief for National Association of Real Estate Investment Trusts 11-21.”

As the rules for the citizenship of unincorporated entities are not addressed by federal statute but are formulated by the courts, we believe that the rules that Congress has laid down for determining the citizenship of corporations – state of incorporation and principal place of business – are the closest analogue for widely-held trust REITs. The Court, however, concluded that “it is up to Congress if it wishes” to extend to trust REITs the same rule that it has long applied to corporations.

* * * *

As always, our colleagues and we are available at any time to discuss these or other matters.

Jim Hanks
Hirsh Ament
Jeb Cook