

# Law360 Insurance Authority: 2nd Circ. Set To Tackle Jurisdiction In NYC's Coverage Row

The Second Circuit will hear arguments Friday over whether a lower court properly dismissed New York City's coverage dispute against a captive insurer for lack of diversity jurisdiction after having already granted the city an early win on the coverage issues. The city contends that Fleet General Insurance Group should be bound to its initial statements that its principal place of business was in Vermont, not New York, and should never have been permitted to challenge jurisdiction after losing a motion for summary judgment.

But because subject-matter jurisdiction is not waivable and may be raised at any time, Fleet maintains that the district court was required to dismiss the suit upon discovering the lack of jurisdiction.

Here, Law360 breaks down the case in advance of Friday's hearing.

## **What's at Stake**

What's interesting about this case, partner Alexander Sugzda said, is that both the city's and the insurer's arguments are true: Parties can raise subject-matter jurisdiction at any time, but they are also bound by judicial admissions.

Though the Second Circuit has not addressed whether a party may be bound to judicial admissions, the Eighth Circuit recently faced a similar issue in an Iowa casino operator's COVID-19 coverage suit against .

After an Iowa federal court dismissed Great River Entertainment LLC's suit in November 2021, the casino operator argued for the first time on appeal that its members were citizens of Illinois — the same state where its insurer is headquartered — and therefore the suit belonged in state court due to a lack of complete diversity between the parties. Zurich, on the other hand, contended that Great River initially agreed that the parties were diverse and could not take back its admission after losing a motion to dismiss.

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The has also held that no action of a party, including consent, "can confer subject-matter jurisdiction upon a federal court." The high court's 1982 ruling in

partner Brad Nash told Law360, saying

citizenship may not be as clear as it would be for a company with extensive operations.

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Alexander M. Sugzda