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Special Report



DECISION SHOULD STREAMLINE REMOVAL LITIGATION

by DORI KORNFELD GOLDMAN

Home is where the heart of the corporation is — or, more precisely, where its nerve center is. The U.S. Supreme Court on Feb. 23 established a uniform standard for determining a corporation's principal place of business in *Hertz Corp. v. Friend*. Replacing the 5th U.S. Circuit Court of Appeals' multifactor "total activity" test, the court held that the principal place of business for diversity jurisdiction purposes is where a company's officers direct, control and coordinate corporate activities. This "nerve center" normally will be the site of corporate headquarters. The decision should help to streamline Texas removal litigation.

Under 28 U.S.C. §1332(c) (1), the federal diversity jurisdiction statute, a corporation is a citizen of its state of incorporation and the state of its principal place of business. A defendant can remove a case from state court to federal court if all the plaintiffs are citizens of different states than all the defendants and the amount in controversy exceeds \$75,000. Congress originally intended the statute to protect out-of-state

defendants from local prejudice they might otherwise suffer in state court.

While the state of incorporation is readily identifiable, federal courts have employed divergent approaches to determine the principal place of business. The 5th Circuit, along with the 6th, 8th, 10th and 11th U.S. Circuit Courts of Appeals, applied the total-activity test. It measured a variety of factors to ascertain the corporation's principal place of business, including a corporation's purpose, executive functions, business activities, officers, facilities and employees. Other circuits employed single- or multifactor tests to analyze a corporation's nerve center or variations such as its center of activity, locus of operations or place of operations.

The panoply of tests utilized by the circuit courts of appeals rendered corporate citizenship dependent upon a suit's geographic forum, notwithstanding the statute's contemplation of only one principal place of business.

Hertz, like many other corporations, conducts its operations in numerous states. According to the Supreme Court opinion, when two California citizens brought a class action suit against the rental car company in California state court for alleged wage-

and-hour violations, Hertz sought to remove the case to federal court on the basis of diversity jurisdiction. Hertz acknowledged that it has a relatively high percentage of facilities, transactions, generated revenues and employees in California, but it asserted that its principal place of business was New Jersey, where its corporate headquarters is located.

The U.S. District Court for the Northern District of California found that the company was a citizen of California, thus destroying diversity jurisdiction, because Hertz conducted significantly more business activities there than in any other state. The 9th Circuit affirmed.

The Supreme Court rejected the lower courts' rationale and concluded the nerve-center test best

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reflects the diversity statute's purpose while promoting administrative simplicity. It remanded for consideration of whether Hertz's New Jersey headquarters serves as the company's actual locus of direction, control and coordination.

Recognizing the potential for manipulation, the Supreme Court cautioned that a party invoking federal jurisdiction must provide competent proof of the corporation's nerve center. A Securities and Exchange Commission filing that lists a corporation's principal executive offices will not suffice, nor will an empty headquarters building with a mailbox and computer, if core executive functions are performed elsewhere.

Standard Shift

The Hertz decision should bring predictability to diversity disputes and simplify litigation over the appropriate forum for a suit. No longer will Texas lawyers have to assemble comprehensive evidence on factors ranging from corporate functions and assets to revenues and operations to satisfy the total-activity

test articulated by the 5th Circuit.

Under the total-activity test, if a corporation's activities were far-flung, the nerve center generally would be the most significant factor. However, the place of activity would control if a corporation's sole operations were in one state and executive offices in another. If its activities largely depended on decision-making at corporate headquarters, the nerve center again would control.

Establishing a uniform nerve-center test may curb forum-shopping by limiting plaintiffs' ability to control the prospects of removal on the basis of the jurisdiction of original filing. Corporate defendants may better predict their ability to seek a federal forum, where they can enjoy such benefits as the unanimous jury verdict requirement, stricter pleading standards, a single judge overseeing the entire case and a decrease in hometown bias.

Although the Supreme Court's approach may reduce gamesmanship, it cannot eliminate anomalous results. For example, the increasing prevalence of telecommunication and virtual management functions may test the bounds of the new rule.

While the nerve-center test will not always be precise, it brings comparative simplicity and reliability to the diversity jurisdiction analysis. ■■■

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