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New Federal Courts Jurisdiction and Venue Clarification Act

Navigating Significant Changes to Jurisdiction and General Removal Procedures

WEDNESDAY, MARCH 28, 2012

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT

March 28, 2012

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FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

- The JVCA “brings more clarity to the operation of Federal jurisdictional statutes and facilitates the identification of the appropriate State or Federal court where actions should be brought. Judges believe the current rules force them to waste time determining jurisdictional issues at the expense of adjudicating underlying litigation. The contents of the bill are based on recommendations developed and approved by the United States Judicial Conference.” House Report 112-10, 1-2.

FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

- ***Effective date:*** January 6, 2012 (calculated as “the expiration of the 30-day period beginning on the date of the enactment of this Act [December 7, 2011].” JVCA, § 105(a).
- ***Application:*** JVCA “shall apply to any action or prosecution commenced on or after [the] effective date” of January 6, 2012. *Id.*
- ***Removed cases:*** “[A]n action or prosecution commenced in State court and removed to Federal court shall be deemed to commence on the date the action or prosecution was commenced, within the meaning of State law, in State court.” JVCA, § 105(b).

OVERVIEW OF JVCA

I. REMOVAL

II. AMOUNT IN CONTROVERSY

III. RESIDENCY FOR VENUE PURPOSES

IV. TRANSFER OF VENUE

V. SUPPLEMENTAL JURISDICTION

New Federal Courts Jurisdiction and Venue Clarification Act



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About SNR Denton

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Our Locations



Jonathan Evan Goldberg



Jonathan Evan Goldberg is a member of SNR Denton's Litigation and Arbitration practice, where he focuses on all aspects of complex commercial litigation, employment law and litigation, and ERISA litigation.

Jonathan, an experienced litigator, trial lawyer, and public speaker, has successfully represented numerous clients in federal and state courts throughout the United States in matters involving claims of retaliation, discrimination, wrongful termination, fraud, breach of fiduciary duty and breach of contract. Jonathan also routinely represents corporations and individuals in trade secrets and restrictive covenant litigation, assists clients in understanding and addressing the various legal issues raised in connection with the failure of Bernard L. Madoff Securities, Inc., and has defended corporate and individual clients in connection with investigations by the US Department of Labor (DOL) and the US Department of Justice (DOJ), Antitrust Division.

Jonathan also concentrates on and advises clients with respect to the following: Advancement and indemnification proceedings; Civil RICO litigation; Whistleblower litigation; Defamation litigation; Executive compensation litigation and arbitration; International litigation and arbitration; Antitrust litigation and arbitration; Products liability litigation; Environmental and toxic tort litigation.

Prior to joining SNR Denton, Jonathan gained significant litigation and trial experience working at several major law firms and served as a federal law clerk for the Honorable Harvey E. Schlesinger, US District Court for the Middle District of Florida, Jacksonville, Florida.

Jonathan is also a trained and skilled mediator.

28 U.S.C. § 1446

28 USC § 1446 - Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(continued)

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

* * *

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

Amendments to 28 USC § 1446

(b) Procedure for Removal of Civil Actions- Section 1446 of title 28, United States Code, is amended as follows:

(1) The section heading is amended to read as follows:

- `Sec. 1446. Procedure for removal of civil actions'.

(2) Subsection (a) is amended--

(A) by striking `(a) A defendant' and inserting `(a) Generally- A defendant'; and

(B) by striking `or criminal prosecution'.

(3) Subsection (b) is amended--

(A) by striking `(b) The notice' and inserting `(b) Requirements; Generally- (1) The notice'; and

(B) by striking the second paragraph and inserting the following:

`(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

`(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

`(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

`(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.';

(C) by striking subsection (c) and inserting the following:

`(c) Requirements; Removal Based on Diversity of Citizenship- (1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

`(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that--

`(A) the notice of removal may assert the amount in controversy if the initial pleading seeks--

`(i) nonmonetary relief; or

`(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

`(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

`(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an `other paper' under subsection (b)(3).

`(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).'. . .

Stafford Live Seminar: Federal Court Jurisdiction and Venue Clarification Act of 2011

Changes to Amount in Controversy - By Kurt Kappes



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About Greenberg Traurig

Greenberg Traurig, LLP is an international, full-service law firm with approximately 1800 attorneys serving clients from 34 offices in the United States, Latin America, Europe, the Middle East and Asia. In the U.S., the firm has more offices than any other among the Top 10 on The National Law Journal's 2011 NLJ 250. For additional information, please visit www.gtlaw.com.

Kurt A. Kappes

Mr. Kappes is a Co-Managing Shareholder of Greenberg Traurig's Sacramento Office. He is also the co-Chair of the national Labor & Employment practice's Non-Compete/Trade Secret and Employment Contract Litigation team. Mr. Kappes also leads the Sacramento Litigation Practice Group.

Mr. Kappes has extensive trial and pretrial experience. He has represented clients in many complex litigation cases involving commercial claims, trade secrets, products liability, professional malpractice, insurance bad faith, qui tam actions, unfair competition, Business and Professions Code Section 17200 actions, and SOX proceedings. He also represents clients in labor and employment issues, including advisory matters, trade secret audits, contracts, discrimination claims, whistleblower cases, and wrongful termination litigation.

Mr. Kappes has argued cases before the Ninth Circuit Court of Appeals, the California Supreme Court, and the Third District Court of Appeals. Mr. Kappes has also represented clients in administrative hearings, arbitrations (single and panel), writ proceedings, jury trials, and bench trials.

Mr. Kappes is an Adjunct Professor at the University of California, Davis School of Law.

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- J.D., Northwestern University School of Law, 1986
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Federal Court Jurisdiction and Venue Clarification Act of 2011

Section 1:

New Rules for Asserting Amount in Controversy

- **Presumption in § 1446(c)(2): “sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy”**

Federal Court Jurisdiction and Venue Clarification Act of 2011

Section 2:

Exception to Deemed Amount

- **New subparagraph (c)(2)(A):**
 - If initial pleading seeks “nonmonetary relief” or an unspecified money judgment, notice of removal may assert the amount.
 - But only where state practice *prohibits* specific demands or permits recovery in excess of *amount demanded*.
 - No rule for when state law permits, but does not require, a specific amount (e.g. FL, AL, TN, CO, etc).

Federal Court Jurisdiction and Venue Clarification Act of 2011

Section 3:

Proving Amount in Controversy by a Preponderance of the Evidence

- **28 U.S.C. § 1446(B):** removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

Federal Court Jurisdiction and Venue Clarification Act of 2011

Section 4: Removability After 30 Days

- **28 U.S.C.A. § 1446(3)(A):** If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an 'other paper' under subsection (b)(3).

Federal Court Jurisdiction and Venue Clarification Act of 2011

Section 5:

Bad-faith Exception to 1-year Limitation

- **Attempts to conceal true amount in controversy**
 - Subparagraph (c)(3)(B) declares “deliberate[] failure” to reveal true amount to be bad faith

JVCA: CITIZENSHIP

I. RESIDENT ALIENS

II. CORPORATIONS

JVCA: CITIZENSHIP

I. RESIDENT ALIENS (JVCA § 101)

- * Amended 28 U.S.C. § 1332(a)(2): District courts shall have original jurisdiction in all civil actions when the amount in controversy exceeds \$75,000, and is between “citizens of a State and citizens or subjects of a foreign state, *except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State.*”

JVCA: CITIZENSHIP

I. RESIDENT ALIENS (cont.)

- * Thus, the JVCA eliminates language from § 1332(a) that resident aliens are not deemed citizens for diversity jurisdiction purposes; accordingly, two resident aliens in a suit against one another who are domiciled in different states cannot invoke federal court diversity jurisdiction. Moreover, district courts shall not have diversity jurisdiction of a claim between a citizen of a state and a citizen or subject of a foreign state admitted to the United States for permanent residence and domiciled in the same state.

JVCA: CITIZENSHIP

I. RESIDENT ALIENS (cont.)

- * JVCA eliminates the “resident alien proviso” added in 1988 (“an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled”); the “deeming” feature created “an arguable basis for expansion of alienage jurisdiction,” House Report at 7.

JVCA: CITIZENSHIP

I. RESIDENT ALIENS (cont.)

- * “By eliminating the proviso, resident aliens would no longer be deemed to be U.S. citizens for purposes of diversity jurisdiction,” but “would permit resident aliens to appear as additional parties to disputes under paragraph 1332(a)(3), without their status as deemed U.S. citizens of their state of residence being treated as a basis for either establishing or defeating the diversity of U.S. citizenship that grounds jurisdiction.” House Report at 7-8.
- * “State court forums would remain available to aliens if Federal court forums were foreclosed.” House Report at 7.

JVCA: CITIZENSHIP

II. CORPORATIONS (JVCA § 102)

- * 28 U.S.C. § 1332(c)(1): “a corporation shall be deemed to be a citizen of *every State and foreign state* by which it has been incorporated and of *the State or foreign state* where it has its principal place of business”
- * The purpose is to clarify that all corporations, foreign and domestic, are regarded as citizens of both their place of incorporation and their principal place of business. Courts had interpreted the word “States” differently, with some courts assuming that the word “applies only to the fifty states” while others had concluded that “the word ‘States’ should mean foreign states, as well as states of the Union.” House Report at 8 (citing cases).

JVCA: CITIZENSHIP

II. CORPORATIONS (cont.)

- * The new provision will “result in a denial of diversity jurisdiction in two situations: (1) where a foreign corporation with its principal place of business in a state sues or is sued by a citizen of that same state, and (2) where a citizen of a foreign country (alien) sues a U.S. corporation with its principal place of business abroad. Such a change would bring a degree of clarity to an area of jurisdictional law now characterized by conflicting approaches in the Federal courts. State courts of general jurisdiction would remain available to the parties.” House Report at 9.

JVCA: CITIZENSHIP

II. CORPORATIONS (cont.)

- * Direct actions against insurance companies, 28 U.S.C. § 1332(c)(1): “... in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, *such insurer shall be deemed a citizen of --*
 - (A) *Every State and foreign state of which the insured is a citizen;*
 - (B) *Every State and foreign state by which the insurer has been incorporated; and*
 - (C) *The State or foreign state where the insurer has its principal place of business.”*

JVCA: CITIZENSHIP

II. CORPORATIONS (cont.)

- * This section harmonizes the definition of citizenship for insurance companies that are subject to direct actions by injured parties without joinder of the insurance policyholder under the law of the limited number of states that permit such actions, see House Report at 11 (“As a practical matter, this amendment would only effect the limited number of states where direct actions are permitted under state law or such actions are determined to exist.”).

JVCA: VENUE AND TRANSFER

I. VENUE

A. Scope: New 28 U.S.C. § 1390

1. Definition of “venue”
2. Exclusions
3. Removed cases

B. Venue Generally: 28 U.S.C. § 1391(a)(1)

C. Abolition of Local Action Rule: New 28 U.S.C. § 1391(a)(2)

D. Priority of Venue: 28 U.S.C. § 1391(b)

E. Residency: Amended 28 U.S.C. § 1391(c)

II. TRANSFER OF VENUE

JVCA: VENUE AND TRANSFER

I. VENUE

A. Scope: New 28 U.S.C. C 1390 (JVCA § 201)

- Definition of “Venue”: “As used in this chapter, the term ‘venue’ refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.” 28 U.S.C. § 1390(a).
- The purpose of § 1390(a) is to “provide a general definition that distinguishes venue (a geographic specification of the appropriate forum for litigation) from other provisions of Federal law that operate as restrictions on subject matter jurisdiction. Although such subject-matter restrictions may also include geographic terms, they differ from venue rules in that they may not be waived by the parties.” House Report at 17.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

A. Scope: New 28 U.S.C. § 1390 (JVCA § 201)

- Exclusions: “Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by section 1333, except that such civil actions may be transferred between district courts as provided in this chapter.” 28 U.S.C. § 1390(b).
- Section 1390(b) intends to “make clear that the general venue provisions do not apply to proceedings in admiralty,” and codifies current case law “to make clear that admiralty disputes would be subject to the general transfer provisions in 28 U.S.C. §§ 1404-1407.” House Report at 17.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

A. Scope: New 28 U.S.C. § 1390 (JVCA § 201)

- Removed Cases: “This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.” 28 U.S.C. § 1390(c).
- Section 1390(c) is intended to maintain “current case law” holding that “the venue statutes do not determine the proper venue for a case removed from state court to a Federal district court,” and also would “maintain current practice by expressly providing that the transfer provisions” would “govern the transfer of a removed action as between districts and divisions of the Federal district courts once a case has been removed.” House Report at 17-18.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

B. Venue Generally, 28 U.S.C. § 1391(a)(1) (JVCA § 202)

- “except as otherwise provided by law --
 - (1) This section shall govern the venue of all civil actions brought in district courts of the United States; and
 - (2) The proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.”
- This new section is intended to “follow current law in providing the general requirements for venue choices,” but does not “displace the special venue rules that govern under particular Federal statutes.” House Report at 18.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

C. Abolition of Local Action Rule, New 28 U.S.C. § 1391(a)(2) (JVCA § 202)

- “[T]he proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.”
- Section 1391(a)(2) “would end the use of the ‘local action’ rule, which provides that certain kinds of actions pertaining to real property may be brought only in the district in which the property is located. ... The rule has primarily caused problems in disputes over suits for damages due to a trespass, because the district court may not be able to exercise personal jurisdiction over the defendant in the place where the property is located. Thus, in such situations, a plaintiff would not be able to pursue his or her case.” House Report at 18.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

- D. Priority of Venue, 28 U.S.C. § 1391(b) (JVCA § 202)
- The new subsection 1391(b) establishes “a single, unitary approach to venue rules that would govern actions brought in Federal court based on diversity or Federal question jurisdiction.” House Report at 19.
 - Subsection 1391(b) “would preserve section 1391 as a general venue statute with provisions for venue based on the residence of the defendants, venue based on where the events giving rise to the action took place, and fallback venue.” *Id.*

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

D. Priority of Venue, 28 U.S.C. § 1391(b) (JVCA § 202)

- Section 1391(b)(1): “a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located”
- Subsection 1391(b)(1) is intended to “limit venue in multiple-defendant cases to a district of the state in which all defendants reside, and to address situations where one of the defendants in a multiple-defendant case is a corporation, which can be a resident for venue purposes in more than one state.” House Report 19.
- The prior language (“a judicial district where any defendant resides, if all defendants reside in the same State”), arguably allowed a plaintiff to sue two corporations, both of which might reside in Illinois for jurisdiction purposes, in New York “on the theory that, “because all defendants reside in the same state (Illinois) . . . , venue is proper in any other district where ‘any defendant resides.’” The new subsection 1391(b)(1) “would alter the statutory language to preclude such a result, while achieving the intended goal of the original statute.” House Report at 19.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

- D. Priority of Venue, 28 U.S.C. § 1391(b) (JVCA § 202)
- Section 1391(b)(2): “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated”
 - This subsection is unchanged from the prior version.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

D. Priority of Venue, 28 U.S.C. § 1391(b) (JVCA § 202)

- Section 1391(b)(3): “if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action”
- This subsection provides a “fallback venue” provision with the language “if there is no district in which an action may otherwise be brought”; the new provision eliminates the prior language of “in which any defendant may be found,” which “could be interpreted to refer to situations in which any defendant may be served with process in the district.” House Report at 20. “The addition of the language ‘with respect to such action’ is intended to avoid the possibility of an overly broad assertion of venue.” *Id.*

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

E. Venue for Specific Defendants, 28 U.S.C. § 1391(c) (JVCA § 202)

- Individuals/“Natural Persons,” Section 1391(c)(1): “a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled”
- Section 1391(c) is intended to resolve a minor split in the courts. “Most courts have interpreted the terms ‘resides’ as a reference to the party’s domicile,” but “a minority of appellate courts (the Second, Ninth, and Tenth Circuits) have interpreted residence as a possibly broader concept than citizenship and have permitted a defendant to be considered a resident in a state and a district other than that person’s state of domicile.” The amended provision provides that, “for venue purposes, a natural person would be deemed to reside in the judicial district in which that person is domiciled.” House Report at 20-21.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

E. Venue for Specific Defendants, 28 U.S.C. § 1391(c)

- Unincorporated Associations, Section 1391(c)(2): “an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business”

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

E. Venue for Specific Defendants, 28 U.S.C. § 1391(c)

- The new provision addresses the division of authority created by the Supreme Court's decision in *Denver & Rio Grande W.R. Co. v. Brotherhood of Railroad Trainmen*, 387 U.S. 556 (1967), which ruled that unions were to be treated like corporations for Federal venue purposes, and thus subject to venue where they were licensed to do business or where they were doing business. With the adoption of the former 28 U.S.C. § 1391(c) in 1988, which provided that corporations were to be regarded as residents of any district in which they were subject to personal jurisdiction, a split developed as some courts applied the 1998 rule to unions, while others continued to apply the *Denver & Rio Grande* venue rule to unincorporated associations. New section 1391(c)(2) "would deem a corporation, an unincorporated association, and any other entity that has the right to sue and to be sued in its common name, if a defendant, to be a resident in any judicial district in which the defendant is subject to the court's personal jurisdiction as to the civil action in question, and, if a plaintiff, only in the judicial district in which it maintains its principal place of business." House Report at 21. The "deeming" provision is expressly made applicable to unincorporated associations, such as partnerships and labor unions, and other entities with the capacity to sue in their common name under applicable law.

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

E. Venue for Specific Defendants, 28 U.S.C. § 1391(c)

- Aliens, Section 1391(c)(3): “a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining whether the action may be brought with respect to other defendants”
- This section changes venue law “by shifting the focus from ‘alienage’ of a defendant to whether the defendant has his or her ‘residence’ outside the United States,” meaning that “for a party resident abroad, whether a natural person or a corporation, any venue privilege against suit in a particular Federal district court would be eliminated, and the protection of the defendant from being sued in an inappropriate forum would be dependent upon whether the defendant was subject to personal jurisdiction in that district and to potential transfer” under § 1404(a). House Report at 22. As a practical matter, “aliens and United States citizens domiciled abroad could not claim a venue defense to the location of litigation.” *Id.*

JVCA: VENUE AND TRANSFER

I. VENUE (cont.)

E. Venue for Specific Defendants, 28 U.S.C. § 1391(c)

- The second clause clarifies that “defendants that reside outside the United States shall be disregarded for purposes of determining the appropriate place for bringing an action as to other resident defendants.” *Id.* at 23.

JVCA: VENUE AND TRANSFER

II. TRANSFER OF VENUE, 28 U.S.C. § 1404 (JVCA § 204)

- “For the convenience of parties and witnesses, and in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought *or to any district or division to which all parties have consented.*” 28 U.S.C. § 1404(a).
- The change allows transfer to a district to which all parties have consented “even if the action could not have been brought in that district or division originally.” House Report at 24. Still, even with the agreement of the parties, the court must find that the transfer is “for the convenience of the parties and witnesses and in the interest of justice.” *Id.*

JVCA: VENUE AND TRANSFER

II. TRANSFER OF VENUE, 28 U.S.C. § 1404 (JVCA § 204) (cont.)

- Transfers from a district court to district courts of Guam, Northern Mariana Islands, or Virgin Islands are not permitted. 28 U.S.C. § 1404(d).
- “The specific bar of such transfers will prevent possible constitutional issues from arising.” House Report at 24.

Speaker



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Barry Goheen is a partner in King & Spalding's Business Litigation Practice Group. He practices in the firm's general and commercial litigation area and focuses on class actions and other multi-party litigation.

Mr. Goheen has served as lead or co-counsel in over 40 class actions in all areas of the law, including antitrust, securities fraud, consumer protection, product liability, privacy, and general commercial disputes in state and federal courts representing such clients as The Coca-Cola Company, Wal-Mart, SunTrust Banks, Bank of America, Brown & Williamson Tobacco Corporation, Jefferson-Pilot Life Insurance Company, Equifax, and Lockheed Martin Corporation.

His class action matters include:

- Participation in several phases of a multi-phase trial of a product liability class action in Miami, Florida.
- Co-counsel in the defense of nationwide class action brought against insurance company alleging unfair insurance practices.
- Lead counsel in the defense of a proposed nationwide RICO class action brought against automobile manufacturer alleging misrepresentation of horsepower in the vehicles.
- Co-counsel in the defense of nationwide antitrust class action brought by purchasers of souvenirs at NASCAR events.
- Lead or co-counsel in defense of over 30 proposed class actions brought by consumers of cigarette products, obtaining dismissal or denial of class certification in all but two cases.

Supplemental Jurisdiction Involving Other Claims

Actions Removable Generally- Section 1441 of title 28, United States Code, is amended as follows:

Subsection (c) is amended to read as follows:

`(c) Joinder of Federal Law Claims and State Law Claims- (1) If a civil action includes--

`(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

`(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute,

the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

`(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).'

Best Practices for Adapting Litigation Strategies

Plaintiffs' Strategy/Defendants' Strategy

- Timing of Removal
- Bad Faith Litigation
- Amount in Controversy
- Trigger for Removal
- Federal/State Claims



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Federal Court Jurisdiction and Venue Clarification Act of 2011

Lingering Problems