

Aviation Group Client Update

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JVCA SPELLS MAJOR CHANGES TO FEDERAL JURISDICTION AND VENUE RULES

On December 7, 2011, the [Federal Courts Jurisdiction and Venue Clarification Act of 2011](#), H.R. 394, P.L. 112-63, (the “Act”), was signed into law. The Act amended the federal removal and venue statutes. (28 U.S.C. §§ 1390, 1441.) These amendments addressed disagreement among the courts with regard to important questions such as the standard of proof, the relevant evidence, and whether a plaintiff may prevent a defendant from removing a case to Federal court by employing delay tactics. By clarifying the rules affecting the timing of removal in cases with multiple defendants, determinations of amount in controversy, and venue, Congress addressed several areas of statutory confusion and disagreement among various courts. We discuss several of the significant changes in Act below.

Removal in Multiple Defendant Cases

Under the Act, for cases involving multiple defendants, each defendant has 30 days from the date of his or her own service to file a notice of removal, resolving deadline confusion where defendants are served at different times. All defendants must consent for an action to be removed, but the change allows an earlier-served defendant to join in a removal by a later-served defendant, even where the earlier-served defendant’s 30-day period has already lapsed. This effectively ends the practice whereby a plaintiff serves an individual defendant (who is unlikely to remove the case) and then waits 30 days to serve a larger defendant (which is likely to remove the case). Under the change, the later-served defendant still has the opportunity to remove the case. (28 U.S.C. § 1446(b).)

Establishing the Amount in Controversy

Under the Act, if the complaint does not demand (in good faith) a specific sum, a defendant may assert an amount in controversy in the notice of removal. The district court will evaluate the amount in controversy using a lower “preponderance of the evidence” standard rather than the less attainable “legal certainty,” standard. This change addresses the different standards of proof applied by the courts to overcome a plaintiff’s allegation of the amount in controversy. (28 U.S.C. § 1446(c).)

“Bad faith” Exception to One-Year Removal Limit

Under the Act, the one-year deadline to remove a case where the plaintiff concealed the amount in controversy (federal jurisdiction) in bad faith is relaxed. The plaintiff’s deliberate concealment of the amount in controversy now constitutes bad faith and an exception to the one-year bar. (28 U.S.C. § 1446(c).)

Remand of Non-Removable Claims

Under the Act, with respect to removal, severance of all nonremovable claims not within the original or supplemental jurisdiction of the district court is required. If a case includes both removable federal question claims and nonremovable claims, a defendant may remove the entire case, and the district court must sever the nonremovable claims and remand them to state court. (28 U.S.C. § 1441(c).)

Citizenship

Under the Act, all foreign and domestic corporations will be regarded as citizens of both their place of incorporation and their principal place of business. The change results in a denial of diversity jurisdiction when (a) a foreign corporation with its principal place of business in a state sues or is sued by a citizen of the same state, and (b) a citizen of a foreign country sues a U.S. corporation with its principal place of business abroad. In practice, Corporations should be less likely to be sued in remote or unfamiliar judicial districts if they are subject to personal jurisdiction in the state because of the location of the company headquarters or a major operations center (e.g., filing suit in the Central District of Missouri because the headquarters is in Saint Louis or Kansas City). (28 U.S.C. § 1332(c)(1).)

Venue Transfer

Under the Act, improper venue can now be asserted, and a district court may transfer the action to any district where the case might have been brought, or to any district or division to which all parties consent. (28 U.S.C. § 1404(a).)

The Act also includes provisions regarding the treatment of resident aliens for purposes of diversity jurisdiction. The Act should limit the practice of plaintiff’s remaining silent or deliberately underestimating the amount in controversy to prevent removal and then seeking higher damages at trial. Generally, these amendments are viewed favorably by companies who face litigation in state court and prefer to move that litigation to the federal courts, such as airlines and other aviation companies. The Act removes a number of procedural roadblocks faced by defendants who previously attempted to remove actions to Federal court. ***All changes are effective and apply to all new state and federal lawsuits commenced on or after January 6, 2012.***

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