The Federal Courts Jurisdiction and Venue Clarification Act of 2011

What Litigators and Litigants Need To Know
by Paul McDonald, Esq. and Eben Albert-Knopp, Esq.

The Federal Courts Jurisdiction and Venue Clarification Act of 2011, H.R. 394, P.L. 112-63, which took effect January 6, 2012, makes important amendments to several federal jurisdictional statutes. This jurisdictional overhaul—Congress’ first in more than a decade—significantly alters federal practice and procedure in several areas, including removal, citizenship of parties, and venue. Practitioners in the federal courts should be aware of and understand these changes.

Removal and Remand (28 U.S.C. §§ 1441, 1446, 1454)

Arguably, the most significant changes brought about by the Act involve the removal of actions from state to federal court. Previously, §1446(b) of Title 28 of the U.S. Code established a 30-day window for removal after receipt by “the defendant,” singular, of the initial pleading. In cases involving multiple defendants served on different dates, federal courts had reached differing conclusions as to when the 30-day period began for each defendant. Some circuits held that no defendant could remove an action later than 30 days after service of the first-served defendant, while others held that each defendant had 30 days from the date of service on that defendant.

New §1446(b)(2)(B) resolves the conflict, and takes the latter approach. The statute now provides that each defendant has 30 days from his or her own date of service (or receipt of the initial pleading) to seek removal of the action. Subsection (b)(2)(C) allows earlier-served defendants to join in or consent to removal by a later-served defendant.

The Act also eliminates federal courts’ discretion to hear unrelated state-law claims in removed actions based on federal-question jurisdiction. Previously, § 1446(c) authorized a defendant to remove the entire case whenever a “separate and independent” federal-question claim was joined with one or more non-removable claims.

The amendment to §1446(c) still permits removal of the entire case, but now requires the federal district court to sever and remand any state law claims over which it does not have original or supplemental jurisdiction. The House Report notes that “[t]his sever and remand approach is intended to settle any remaining jurisdictional problems while preserving the defendant’s right to remove claims arising under Federal law.”

The Act addresses issues relating to uncertainty of the amount in controversy when removal is sought. Where an initial pleading seeks non-monetary relief or state law allows recovery in excess of the amount that can be removed, new §1446(c)(2) expressly allows defendant to assert the amount in controversy in the notice of removal. Removal will be permitted if the federal court finds, by a preponderance of evidence, that the amount-in-controversy requirement is satisfied.

The Act clarifies that defendant can use discovery in state court to determine the amount in controversy where it is not established by the initial pleading. Now, a party who receives information in discovery first demonstrating that the amount in controversy is sufficient has 30 days in which to remove action.

Specifically, new § 1446(c)(3)(A) deems that a statement in response to discovery relating to the amount in controversy is an “other paper” within the meaning of §1446(b)(3) (previously the second paragraph of §1446(b)), which provides: “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 of any “other paper” from which it may first be ascertained that the amount in controversy exceeds the sum of $50,000.”

New §1446(c)(3)(B) maintains the prohibition against removal of diversity actions more than one year after commencement of the action, but adds a limited exception authorizing district courts to permit such removal if the court finds that plaintiff has acted in bad faith to prevent a defendant from removing the action. The House Report notes that the “inclusion in the new standard of the phrase ‘in order to prevent a defendant from removing the action’ makes clear that the exception to the bar of removal after one year is limited in scope.” However, if a finding is made that plaintiff deliberately failed to disclose the amount in controversy to prevent removal, that failure would be deemed to be bad faith for removal purposes under new §1446(c)(3)(B).

Impact on Practice: New §1446(c)(3)(B) removes the one-year time limitation for cases involving multiple defendants, which requires that all defendants who have been properly joined and served must join in or consent to removal. The unanimity provision applies only to cases removed exclusively under 28 U.S.C. § 1441(a), and therefore does not apply to class actions.

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In a final bit of housekeeping, the Act also reorganizes the removal and remand statutes by, among other things: (1) separating the removal statute into civil and criminal statutes; (2) creating a new §1454 which contains the criminal provisions; (3) revising the heading of §1441 to make clear that it applies only to civil actions; and (4) placing the civil removal provisions that apply exclusively to diversity actions under a separate subheading, new § 1441(b).

CITIZENSHIP OF PARTIES FOR PURPOSES OF DIVERSITY JURISDICTION

The Act also makes several changes to diversity jurisdiction under 28 U.S.C. § 1332. For one, it removes the so-called “resident alien proviso” from § 1332(a), which provided that “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 intent of the proviso was to limit federal court jurisdiction by precluding diversity jurisdiction in cases between United States citizens and resident aliens domiciled in the same state, where the risk of bias was perceived to be low.

However, the proviso had the unintended consequence of expanding federal court jurisdiction in other settings. For instance, the proviso would deem resident aliens from different states to be citizens of their respective states of domicile, allowing them to claim access to the federal courts in a suit between them. To remedy this situation, the Act removes the resident alien proviso and simply amends § 1332(a)(2) to provide that federal courts have no diversity jurisdiction between a citizen of a state and a citizen or subject of a foreign state who is domiciled in the same state. This satisfies the initial intent of the proviso while avoiding its unintended consequences.

The Act further clarifies that corporations, foreign and domestic, are citizens both of their place of incorporation and their principal place of business. Previously, some courts had treated a U.S. corporation with its principal place of business abroad as a citizen only of the place of incorporation. The Act adds the words “foreign state” in two places in §1302(c)(1), resulting in a denial of diversity jurisdiction where: (1) 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) a citizen of a foreign country sues a U.S. corporation with its principal place of business abroad.

New § 1332(c)(1) also clarifies that in the case of direct actions against insurance companies, the insurer is deemed a citizen of every state and foreign state in which its principal place of business is located. This satisfies the initial intent of the proviso while avoiding its unintended consequences.

VENUE CLARIFICATION ACT

New § 1391(b) refines the venue rules applicable to civil actions generally, and unifies the heretofore disparate approaches to venue in diversity versus federal-question cases. Previously, the wording of the venue statute allowed a plaintiff to sue multiple defendants in a district in which any defendant resided, so long as all defendants in the same state. This satisfies the initial intent of the proviso while avoiding its unintended consequences.

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New § 1332(c)(1) also clarifies that in the case of direct actions against insurance companies, the insurer is deemed to reside only in the judicial district in which it is subject to the court’s personal jurisdiction. If a plaintiff, the entity is deemed to reside only in the judicial district in which the entity maintains its principal place of business.

Subsection 1391(c)(3) clarifies that, for defendants residing outside the U.S., whether a U.S. or foreign citizen (but not including permanent resident aliens with a domicile in the U.S.), venue is proper in any judicial district. The Act focuses on residency in the U.S., not on alienage, and restricts both aliens and United States citizens domiciled abroad from claiming a venue defense to the location of the litigation. Litigants could still object to personal jurisdiction, however.

The Act also makes several changes to diversity jurisdiction under 28 U.S.C. § 1332. The Act focuses on the interest of jus- tice in allowing venue in a district where the case might originally have been brought. Subsection 1391(b)(5) continues to allow for cases to be brought in a judicial district in which any defendant resides, but now limits venue in multiple-defendant cases to a district of the state where all defendants reside. Subsection 1391(b)(3) also eliminates the difference in the fallback venue provisions between diversity and federal-question claims, providing that any civil action may now be brought in a judicial district in which a defendant is subject to the court’s personal jurisdiction, provided there is no other district in which the action could be brought.

The Act ends use of the “local action” rule, which provided that certain kinds of actions pertaining to real property could be brought anywhere in the United States. The Act focuses on the interest of justice in allowing venue in a district where the case might originally have been brought. Subsection 1391(b)(5) continues to allow for cases to be brought in a judicial district in which any defendant resides, but now limits venue in multiple-defendant cases to a district of the state where all defendants reside. Subsection 1391(b)(3) also eliminates the difference in the fallback venue provisions between diversity and federal-question claims, providing that any civil action may now be brought in a judicial district in which a defendant is subject to the court’s personal jurisdiction, provided there is no other district in which the action could be brought.

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