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President Signs Federal Courts Jurisdiction and Venue Clarification Act of 2011 into Law

Thanks to Congress and the president, Christmas came early for federal civil procedure aficionados. On December 7, 2011, President Obama signed into law the first changes in almost a decade to federal court jurisdiction and general removal procedures not involving class actions. The new law, the Federal Courts Jurisdiction and Venue Clarification Act of 2011, H. R. 394, P.L. 112-63 (the "Act"), contains significant changes to the removal statute, 28 U.S.C. § 1441, and will affect nearly every new case filed or removed next year invoking the courts' diversity jurisdiction. 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. As a result, Congress has hopefully simplified removal and venue rules for both plaintiffs and defendants in federal court.

The centerpiece of the law is a provision addressing a longstanding conflict over the statutory 30-day period for "the defendant" to remove an action to federal court. Circuits disagreed over how to interpret the law in cases with multiple defendants served at different times. Compare *Bailey v. Janssen Pharms., Inc.*, 536 F.3d 1202 (11th Cir. 2008) (30-day period runs from the date of service on the last-served defendant) with *Marano Enters. v. Z-Teca Rests., LP*, 254 F.3d 753 (8th Cir. 2001) (30 days to effect removal for each defendant, regardless of when others had sought to remove) with *Getty Oil Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254 (5th Cir. 1988) (30 days after service upon the first-served defendant).

To address the issue, the new law provides that each defendant will have 30 days from his or her own date of service to seek removal. Earlier-served defendants would also be allowed to join in or consent to removal by another defendant. To avoid further confusion, the law also codifies the "rule of unanimity," set forth over a century ago by the Supreme Court, requiring all defendants to consent to removal.

In addition, the Act contains significant changes to how the amount in controversy for purposes of removal is ascertained, alleged and proved. First, the Act provides that defendants facing a state pleading without specific allegations of an amount in controversy may still remove, even after the 30-day period expires, if they receive discovery from the plaintiff indicating that the jurisdictional amount is met. In cases where state practice does not permit a specific monetary demand or where recovery may be in excess of the demand, defendants will now be authorized to allege the amount in controversy in the removal notice when the initial pleading seeks non-monetary relief. Lastly, the Act adopts the majority view requiring that the amount be shown by "the preponderance of the evidence," rejecting the other conflicting standards.

With an eye to eliminating the need for, but still preserving, the roughly 200 special venue provisions found throughout the Code, Congress also undertook a complete revision of general federal venue statute, 28 U. S. C. §§ 1390 et seq. Among the notable changes made, the Act resolves the circuit split on the question of residency for the purposes of venue, adopting the majority standard that residency is a natural person's state of domicile, the same standard used in the determination of citizenship for diversity jurisdiction. And beginning in 2012, Congress has provided that litigants may stipulate to the transfer of venue to a district where the lawsuit may otherwise have not originally been brought "for the convenience of the parties and witnesses and in the interest of justice."

The Act makes a variety of other changes to supplemental jurisdiction involving unrelated state claims, suits between aliens, and residency of non-resident aliens and foreign corporations for venue purposes. Judges, federal practitioners and students of civil procedure will also note the law's reorganization of the jurisdictional statutes found in Title 28 of the U.S. Code, which have been graciously simplified for clarity.

The Act, and its numerous changes, take effect on January 6, 2012. The law will apply to all new state and federal lawsuits commenced on or after that date.

One immediate result: plaintiffs considering legal action must decide now if they prefer the current rules in their circuit and should immediately file, or prefer instead to litigate after the law takes effect.

Looking further down range, no matter the subject area or party represented, the changes will require all federal practice litigators to reconsider longstanding litigation strategies. And one interesting footnote: while the Act does not eliminate the prior law's provision that the 30-day removal period is triggered by service or "receipt" of the pleading, there is no indication that Congress intended to abrogate the decision in *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), holding that formal service, not mere receipt, is required.

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