

## SUMMARY OF JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

1. Section 1332(a) is amended to delete entirely the last sentence — that which ascribes citizenship to a resident alien in the state in which he is domiciled. Section 1332(a)(2) is amended to add the following phrase after the grant of alienage: "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 who are domiciled in the same State." So a case by a citizen of CA against a green card alien who is domiciled in CA will not invoke jurisdiction.

2. Section 1332(c)(1) is amended to provide that a corporation is a citizen of the State and foreign country where incorporated and the State and foreign country where it has its principal place of business. This simply makes alien clearer regarding litigation with corporations. There is detailed new material about citizenship of an insurer for direct-action purposes.

3. Section 1390 is new and defines venue. It is the "geographic specification of the proper court" in the federal system. Section 1390(b) expressly excludes from the title cases arising under admiralty and section 1390(c) expressly excludes from the title cases removed from state court. Nothing new here.

4. Section 1391 is rewritten to give a unitary provision rather than subdividing choices for diversity of citizenship jurisdiction and federal question. Section 1391(a)(2) makes clear that the venue choices are good "without regard to whether the action is local or transitory in nature." In sum, here are the new provisions:

- local action rule abolished.
- one venue choice is a district where all Ds reside; § 1391(b)(1) clarifies that if they all reside in one state, venue can be laid in a district where any of them resides.
- the other venue choice is a district where a substantial part of the claim arose; no change in language from current statute. § 1391(b)(2).
- the fallback venue provision, § 1391(b)(3) — if there is no district meeting one of the first two anywhere in the United States, venue is permitted where any D is "subject to the court's personal jurisdiction with respect to such action."

5. Section 1391(c) now defines residence for venue purposes for all litigants, not just for corporations.

- a natural person resides in the district where domiciled; § 1391(c)(1) thus adopts the majority rule and ends the effort by some courts to find a broader definition, such as a summer home; this definition includes permanent resident (green card) aliens — such a person is deemed to reside in the district in which he is domiciled.

- section 1391(b)(2) defines residence for all entities with capacity to litigate, so it's good for corporations and non-incorporated businesses; they reside where in all districts where subject to personal jurisdiction when the case is commenced (note that the statute also gives a definition of an entity's residence if it is the plaintiff — it resides only where it has its principal place of business; this has no application in § 1391, but there are specialized venue statutes that allow venue where plaintiff resides; this will work for them).
- section 1391(c)(3) changes the current rule, which applies to aliens and says they can be sued in any district; now the line is drawn at whether the D — alien or U.S. citizen — resides in the U.S. So venue concerning a non-U.S. resident is proper in any district, and joinder of such a defendant is disregarded in determining venue for other defendants.

6. Section 1391(d) is unchanged regarding where corporation is subject to personal jurisdiction in a state, it is deemed to reside in any district where its contacts would be sufficient to subject it to personal jurisdiction if that were a separate State. [Query why this is limited to corporations and not to all business associations.]

7. Section 1392 is abolished, consistent with abolishing the local action rule.

8. Section 1404(a) makes an inroad on *Hoffman v. Blaski* to the extent that a case may be transferred to a district that is not a proper venue or that does not have personal jurisdiction if all parties consent and the court finds cause for the transfer.

9. Section 1404(d) is new and prohibits transfer from a district court to a district court of a territory, reflecting concerns about transferring from an Article III court to a non-Article III court.

10. Removal statutes are restructured in a good way. Section 1441 now groups specialized rules about removal of diversity cases (except the one-year rule) into a subpart (§ 1441(b)) and removal of civil and criminal cases is split into different statutes. Now all of the material about removal of criminal cases is in a new section, § 1454. Section 1446 is now applicable only to civil cases. Here is a summary of the civil removal materials, which make some good changes:

- the provision about ignoring the citizenship of fictitious parties is now in § 1441(b)(1).
- the instate defendant rule for diversity cases is in § 1441(b)(2).
- the nettlesome separate and independent federal question claim removal of § 1446(c) is rewritten to make very clear (1) that you can remove if there's a federal question and (2) that state law claims over which there is no diversity or supplemental jurisdiction must be severed and remanded to state court.
- § 1446(b)(2)(A) codifies the unanimity rule — the removal must be joined by all defendants “who have been properly joined and served.”

- the timing conundrum — which now has split the courts of appeals three ways — is resolved; under § 1446(b)(2)(B) and (C), each newly served defendant has 30 days from service in which to file a notice of removal; he has to get earlier joined and served defendants to join in the notice (to meet the unanimity requirement), but each new defendant gets that chance.
- § 1446(b)(3) is now the home of the rule concerning cases that were not removable initially but become removable later; the clock is still 30 days from service of the “paper” that triggers removal.
- § 1446(c) is new and focuses on problems with removing diversity cases; § 1446(c)(1) is the one-year rule with a twist — a diversity case cannot be removed more than one year after it was filed in state court unless “the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action”; there are many cases in which plaintiff delays serving a defendant until after one year or joins a nondiverse defendant and dismisses that defendant after one year; the door is now open to removal more than a year after filing.
- under § 1446(c)(2), the plaintiff's demand is deemed to be the amount in controversy except the defendant may state the amount in its notice of removal if the complaint in state court either sought nonmonetary relief or a money judgment without specifying an amount or if state law allows recovery of more than pleaded for.
- however, the court in such a case will only get to keep the case if it finds by a preponderance of the evidence that the amount exceeds \$75,000.
- if the case as filed is not removable simply because of amount in controversy, discovery or other information in the record in the state-court proceeding can trigger removal; such information is deemed to be a “paper” that will trigger the 30 day removal clock.
- if notice of removal is filed more than one year after commencement in state court, and the district court finds that the plaintiff “deliberately failed to disclose the actual amount in controversy to prevent removal,” such a finding is deemed “bad faith” for purposes of extending the one-year limit under § 1446(c)(1).

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