

## BUSINESS LITIGATION ALERT

MARCH 2010

### United States Supreme Court Holds That Corporate “Nerve Center” Dictates Federal Jurisdiction

**In *Hertz Corp. v. Friend*, the United States Supreme Court unanimously held that a corporation’s “nerve center,” commonly its headquarters, is its principal place of business for federal jurisdiction.** This decision impacts every corporation in the United States, and provides a framework to determine whether a lawsuit is susceptible for removal to Federal Court on diversity grounds.

For federal diversity jurisdiction, 28 U.S.C. 1332(c)(1) states that “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” However, prior to the *Hertz* decision, the Circuits were divided on how to analyze the location of a corporation’s principal of business. Is the principal place of business where most of the plants and operational facilities are located? Is the principal place of business where the most products are sold or the most activity conducted? Some Circuits utilized a “total activity” test that evaluated the purpose and type of a corporation’s business and its legal site. Other Circuits utilized a “place of operations” test. Other Circuits applied a “center of corporate activities” test.

In *Hertz*, the United States Supreme Court resolved these conflicts and held that a corporation’s principal place of business was its “nerve center,” where high level decisions are made.

*Hertz* involved two employees, citizens of California, suing on behalf of themselves and a potential class in California state court for violations of California’s wage and hour laws. *Hertz*, incorporated in Delaware, maintained offices in California and forty-four other States. *Hertz* attempted to remove the lawsuit to Federal Court on diversity grounds, arguing that its principal place of business was in New Jersey, the location of its corporate headquarters. The District Court, and the Ninth Circuit, denied the removal petition and held that *Hertz*’ principal place of business was California because *Hertz* did more business in California compared to any other State.

The United States Supreme Court reversed, holding that *Hertz*’ “nerve center” and principal place of business was in New Jersey, and therefore, the parties were citizens of different states. Thus, under federal diversity jurisdiction principles, removal to Federal Court was proper. The Court held that the phrase “principal place of business” refers to the place where a corporation’s high level officers direct, control, and coordinate the corporation’s activities, which is commonly found at the corporate headquarters.

This decision provides clarity and uniformity. Every corporation can now better evaluate whether a particular lawsuit could be removed to Federal Court. We welcome any questions regarding this case’s impact on your business.

## Forum Selection Clauses Must Contain Specific Language Indicating The Exclusiveness Of The Elected Jurisdiction

### Are your forum selection clauses enforceable?

Maybe not.

In *First Tek Technologies, Inc. v. Pac Corp.*, the New Jersey Appellate Division held that a forum selection clause did not require dismissal of the complaint because the parties did not agree to the exclusive jurisdiction of the State of Maryland. In a breach of contract action between First Tek Technologies (“First Tek”) and Pac Corporation (“Pac”), First Tek provided services to one of Pac’s clients in New Jersey, but Pac refused to pay, so First Tek sued.

Pac moved to dismiss the Complaint based on the forum selection clause in the contract. The forum selection clause read:

The Agreement shall be governed and construed in accordance with laws of the

State of Maryland and each party hereby submits to the venue and jurisdiction thereof.

Pac successfully argued before the trial court that this clause conferred exclusive jurisdiction on Maryland courts.

The Appellate Division reversed. It found that the forum selection clause did not elect Maryland as the **exclusive** venue for the resolution of claims. The court reasoned that the clause contained only an agreement to submit to the “venue and jurisdiction” of Maryland. “Nothing in that phrase indicates that the parties intended that Maryland would have **exclusive** jurisdiction of their disputes....” The appellate court reversed and remanded the matter back to the trial court.

If your company wants its contracts to require dispute resolution exclusively in a particular jurisdiction, make sure your forum selection clauses are air tight.

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## New Jersey Appellate Court Further Defines The Jurisdiction Limit Of The Special Civil Part In Consumer Fraud Cases

The New Jersey appellate court recently ruled that the \$15,000 jurisdictional limit of the Special Civil Part in a Consumer Fraud Act claim

includes not only compensatory damages for ascertainable loss, but also any award for treble damages. In *Della Valle v. v. Angel Remodeling*, the Appellate Division held that only costs, including counsel fees, associated with an award in a consumer fraud act claim are **not** included in determining whether the damages claims exceed the jurisdictional limit of the Special Civil Part.

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In *Della Valle*, the judge entered a judgment against defendants in the amount of \$15,000 for breach of a home improvement contract. The judge then trebled that award, and allowed counsel fees in the amount of \$2,010. In reversing the trial court, the Appellate Division found, among other things, that the \$45,000 treble damages award exceeded the jurisdictional limit of the Special Civil Part. The Appellate Court analyzed the award, separating it into three parts: (1) actual damages (or ascertainable loss); (2) treble damages; and (3) counsel fees.

The Appellate Court found that the New Jersey Supreme Court allowed only a counsel fee award to increase a judgment beyond the jurisdictional limit of the Special Civil Part. The Court found no support for the proposition that a treble damages award causing a judgment to exceed \$15,000 would not violate the jurisdictional limit of the Special Civil Part. In this case, treble damages of \$45,000 caused the judgment to exceed the Special Civil Part's jurisdictional amount requiring reversal. ■

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