

COMMERCIAL LITIGATION ALERT

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Recent Supreme Court Decision Impacts All Corporate Entities Doing Business In More Than One State

On February 23, 2010, a unanimous United States Supreme Court in *Hertz Corp. v. Friend*, 175 L. Ed. 2d 1029 (2010) clarified the standard for determining a company's principal place of business when invoking federal court jurisdiction in cases where a corporate entity does business in more than one state. Defining corporate citizenship for purposes of federal diversity jurisdiction, the Court concluded that the phrase "principal place of business" refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities (*i.e.*, the "nerve center"). The Court's decision has a broad-ranging impact on all corporate entities doing business in more than one state.

If a corporation's headquarters and executive offices are in the same State in which it conducts most of its business, the principal place of business test for diversity purposes is straight forward. But where corporate headquarters and executive offices are in one State, while the corporation's plants or other centers of business activity are located in other states (which is commonly the case), the question is not as simple.

The federal diversity jurisdiction statute provides 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." 28 U.S.C. §1332(c)(1). This statutory authority has proved difficult for federal courts to apply and has led to varying interpretations

among the circuit courts. Several "tests" have developed from circuit to circuit, including a "total activity" test and a "nerve center" test, among others. Compare *Tosco Corp. v. Community for a Better Environment*, 236 F.3d 495 (9th Cir.2001) and *Capitol Indemnity Corp. v. Russellville Steel Co.*, 367 F.3d 831 (8th Cir.2004), with *Wisconsin Knife Works v. National Metal Crafters*, 781 F.2d 1280 (7th Cir.1986). Cognizant of the various tests with varying results, the Court granted certiorari in *Hertz* to define the proper test.

In *Hertz*, the Hertz Corporation submitted a declaration seeking to define its principal place of business in New Jersey, stating: it operates facilities in 44 states; its leadership and its domestic subsidiaries are located at its "corporate headquarters" in New Jersey; its "core executive and administrative functions...are carried out" in New Jersey; and, that its "major administrative operations...are found in New Jersey and Oklahoma." *Hertz*, at 1035. Despite the declaration, the United States District Court of the Northern District of California applied Ninth Circuit precedent, which instructs courts to identify a corporation's principal place of business by determining where the corporation's activity substantially predominates. *Id.* Thus, despite the declaration, in applying the Ninth Circuit test, the District Court found that the "plurality of each of the relevant business activities" was in California, and that "the differential between the amount of those activities" in California and the amount in "the next closest state" was "significant." *Id.* The Ninth Circuit affirmed.

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Granting certiorari, the Supreme Court concluded that “principal place of business” refers to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities. *Id.* at 1041. Justice Stephen Breyer, noted: “and in practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the “nerve center,” and not simply an office where the corporation holds its board meetings” *Hertz*, at 1041-42.

Admitting that this approach, while imperfect, is superior to other possibilities, the Court cited three sets of considerations that weighed heavily in its decision. First, the statutory language of 28 U.S.C. §1332(c)(1) supports this approach. *Id.* at 1042. Second, this approach promotes greater predictability as complex jurisdictional tests were complicating cases, eating up time and money as the parties litigated over which court is the right court to decide the claims, not the actual merits of the claims. *Id.* at 1042-43. Third, this approach is no more complex than the original numerical test proposed early on in the legislative history of 28 U.S.C. §1332(c)(1). *Id.* at 1043.

The Court’s sensible test instructs courts to focus on a business entity’s center of overall direction, control, and coordination. The Court did admit, however, that the test is not perfect: “[A]ccepting

occasionally counterintuitive results is the price the legal system must pay to avoid overly complex jurisdictional administration while producing the benefits that accompany a more uniform legal system.” *Id.* at 1044. Cautioning that there is still the possibility for manipulation, the Court reminds us that the burden of persuasion for establishing diversity jurisdiction remains on the party asserting it. *Id.* (citing *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); and, 13E Wright & Miller §3602.1, at 119).

Applying the nerve center approach, the Court vacated the Ninth Circuit’s judgment, and determined that Hertz’s center of direction, control, and coordination – its nerve center – and its corporate headquarters are one and the same, and they are located in New Jersey, not California. *Id.* at 1044.

The *Hertz* decision will have broad-ranging impact on companies doing business in more than one state and their access to the federal courts. In order to avoid the expenses associated with litigating over which court is appropriate to decide the case, all corporate entities – both large and small – should make efforts to determine an adversary’s “never center,” prior to filing suit. Failing to do so may result in unanticipated costs and protracted litigation. ■

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