

Supreme Court Holds That the Principal Place of Business, for the Purposes of Diversity of Citizenship, Refers to the "Nerve Center," or the Place Where the Corporation's High Level Officers Direct, Control and Coordinate the Corporation's Activities

Breaking Developments In London Market Law 3/9/10

Hertz Corp. v. Friend, 559 U.S. ____ (2010)

Melinda Friend and John Nhieu (hereinafter "Friend"), two citizens of California, sued Hertz Corporation in California state court for violations of the state wage and hour laws. Hertz subsequently filed a notice of removal to federal court, claiming that the plaintiffs and the defendant were citizens of different states and that the federal court possessed diversity jurisdiction. Friend claimed that diversity jurisdiction was lacking because Hertz was a California citizen. Hertz submitted a declaration from an employee, which opined that the principal place of business was in New Jersey because Hertz's core executive, leadership and administrative activities are carried out at its headquarters located in New Jersey. The district court accepted Hertz's declaration as undisputed, but concluded that Hertz was a citizen of California based on Ninth Circuit precedent. The Ninth Circuit had previously held that the "principal place of business" is determined by:

the amount of a corporation's business activity State by State. If the amount of activity is "significantly larger" or "substantially predominates" in one State, then that State is the corporation's "principal place of business." If there is no such State, then the "principal place of business" is the corporation's "nerve center," *i.e.*, the place where "the majority of its executive and administrative functions are performed."¹

Applying this test, the district court held that Hertz's principal place of business was California because the plurality of Hertz's relevant business activities was carried out in California. The district court accordingly remanded the case to the state court. Hertz appealed to the Ninth Circuit, which affirmed the district court's holding that it lacked diversity jurisdiction.

The Supreme Court granted the writ of certiorari due to the disparities among the Circuits in applying the test for corporate citizenship — *i.e.*, the principal place of business test. Prior to evaluating whether Hertz was a citizen of California or New Jersey, the Court reviewed the legislative history of diversity jurisdiction. Under 28 U.S.C. § 1332, the federal courts shall have "original jurisdiction of all civil actions where the matter in controversy exceeds the sum or

value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States[.]” 28 U.S.C. § 1332(a)(1). The 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." *Id.* at § 1332(c)(1). The Court explained that section 1332(c)(1)'s principal place of business language was added to the "state-of-incorporation" test in order to curb the manipulation of federal court jurisdiction and to reduce the number of diversity cases. However, the Court opined that the Circuit courts have not applied the principal place of business test in a predictable, sensible or consistent manner. In particular, the principal place of business test became especially confusing where the corporation's headquarters are in a different state than the corporation's centers of business activities. Some Circuits applied the "nerve center" test, in which it looked only to the place where the corporation's high level officers direct, control and coordinate the corporation's activities. *See, e.g., Topp v. Compair Inc.*, 814 F.2d 830, 834 (1st Cir. 1987). Other Circuits, however, looked to the place where the majority of the corporation's business activities are conducted. *See, e.g., Diaz-Rodriguez v. Pep Boys Corp.*, 410 F.3d 56, 60-61 (1st Cir. 2005); *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 656-57 (2d Cir. 1979).

The Supreme Court ultimately adopts the "nerve center" test out of concerns for predictability, consistency and judicial efficiency. Under the Court's conceptualization of the test, the district court is instructed to interpret the "principal place of business" as the place where the corporation's officers direct, control and coordinate the corporation's activities. The Court further explained that in the typical case the principal place of business will be the place where the corporation maintains its headquarters. However, the headquarters may not simply be an office where the corporation holds its board meetings, has a mail drop box, or has a bare office with a computer. In this situation, the district court is instructed to locate the "nerve center" as the place of actual direction, control, and coordination without such manipulation. In light of this new test, the Supreme Court remanded the case to the district court in order to provide the plaintiffs with an opportunity to litigate the principal place of business issue. However, the Court did note that Hertz's unchallenged declaration suggested that the principal place of business is its headquarters in New Jersey.

In summation, the *Hertz* Court has provided a more predictable "principal place of business" test. Generally speaking, this decision puts corporations on notice that their principal place of business, for purposes of diversity jurisdiction, will be determined by where the corporation's officers direct, control and coordinate the corporation's activities. In the typical case, this place will be the corporation's headquarters. Yet, the *Hertz* decision is clear: Any attempt at jurisdictional manipulation — *i.e.*, by relying solely on the location listed on the SEC Form 10-K for principal executive offices, the location of a mail drop box or the location of board meetings — will not be effective under this new test.

¹ *See Tosco Corp. v. Communities for a Better Environment*, 236 F.3d 495, 500-02 (9th Cir. 2001).

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