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#### About Allen Matkins

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## New U.S. Supreme Court Decision Clarifies Federal Diversity Jurisdiction Over Corporations

This decision sets out a simplified, more predictable jurisdictional rule for determining whether certain cases involving corporations that operate in multiple states can be removed to federal court. It clarifies what is often an unpredictable and expensive phase of litigation. Affected companies should review their policies and procedures in light of this decision.

### ***Hertz Corp. v. Friend***

Earlier this week, the U.S. Supreme Court unanimously ruled that a corporation's "principal place of business" (i.e., where it is a citizen for jurisdictional purposes) is the place where the corporation's high level officers direct, control, and coordinate the corporation's activities – the corporation's "nerve center." *Hertz Corp. v. Friend* (February 23, 2010). [Read the full decision here.](#)

Essentially, the decision clarifies the rule concerning federal diversity jurisdiction by:

- Uniformly defining a corporation's "principal place of business" as the place where the corporation's activities are controlled;
- Limiting a corporation's "principal place of business" to only one state; and
- Disregarding the total amount of business activity a corporation may conduct in particular states, as well as other factors previously considered by the various circuit courts to determine a corporation's citizenship.

### **Various Tests Previously Employed By The Circuits**

Before the *Hertz* decision, the circuits (and sometimes different courts within a single circuit) applied general multifactor tests in different ways to try to determine the citizenship of a corporation for diversity jurisdiction purposes. Some courts looked to where a corporation's "nerve center" was located – the place from which "it radiates out to its constituent parts and from which its officers direct, control and coordinate all activities without regard to locale." Other courts focused more heavily on where a corporation's actual business activities were located and examined

This alert applies to:

Companies that operate in more than one state.

Companies with corporate headquarters in one state, and business activities in other states.

PLEASE CONTACT US if you have questions regarding this decision and how it may affect your company.

a large list of factors, including, for example, plant location, sales or servicing centers, transactions, payrolls, or revenue generation. Because these tests were not uniform, a corporation's citizenship could be different depending on the circuit deciding the question. Further, the expense of determining corporate citizenship was often unnecessarily high due to the complexity and unpredictability of some of these tests.

### **The *Hertz* Decision: Applying The "Nerve Center" Test**

In *Hertz*, two California citizens sued Hertz Corporation in state court alleging violations of California's wage and hour laws. Hertz sought to remove the case to federal court because of diversity jurisdiction. In support of their request, Hertz filed a declaration showing that although Hertz did business in California, Hertz' "principal place of business" was in New Jersey, the location of its corporate headquarters and the place where its core executive and administrative functions are carried out.

The District Court applied Ninth Circuit precedent that looked at the amount of a corporation's business activity state by state. Because the amount of Hertz' business activity was significantly larger in California than in other states, the District Court determined that California was Hertz' "principal place of business," and, thus, Hertz was a California citizen. The Ninth Circuit affirmed the decision, and the U.S. Supreme Court granted a writ of *certiorari*.

To address the split in the circuits and to try to simplify the jurisdictional test, the Supreme Court concluded:

. . . "principal place of business" is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's "nerve center." 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 (for example, attended by directors and officers who have traveled there for the occasion).

The Supreme Court explained that this approach would avoid the complex jurisdictional tests that complicate a case, eat up time and money, produce appeals and reversals, encourage gamesmanship, waste judicial resources, and diminish the likelihood that a definite outcome can be predicted. Predictability, the Supreme Court noted, is valuable to corporations making business and investment decisions, and it benefits plaintiffs deciding whether to file in state or federal court.

The Supreme Court recognized, however, that the test will not always be simple. For example, in this age of video conferences, email and telecommuting, corporate officers may work at several different locations, dividing the company's command and

coordinating functions. Further, a company's business activities may be very visible to the public in one state, while its top officers quietly direct those activities in another state. Such situations will require greater discovery and expense as opposed to the simpler situation addressed by *Hertz*.

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