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Act Clarifying Jurisdiction and Venue in Federal Court Now in Effect

On December 7, 2011, President Obama signed into law the first significant changes to the general (*i.e.*, non-CAFA) federal diversity jurisdiction, removal, and venue statutes since the Judicial Improvements Act of 1990. The new law, the Federal Courts Jurisdiction and Venue Clarification Act of 2011 (“JVCA”), P.L. 112-63, which took effect on January 6, 2012, will affect nearly every new case filed in or removed to federal court under traditional diversity jurisdiction. A detailed explanation of the statute can be found in the House Judiciary Committee Report, available [here](#).

One of the more important provisions of this law addresses the longstanding conflict over the timing of removal in multi-defendant cases. Under the JVCA, each defendant has 30 days from its own date of service to remove, regardless of when other co-defendants may have been served. If an earlier-served defendant misses its deadline for removal, it may still consent to a timely removal by a later-served defendant. The JVCA also codifies the U.S. Supreme Court’s “rule of unanimity,” which requires that all defendants properly joined and served must join in or consent to removal (except in CAFA cases, as discussed below).

The JVCA contains potentially significant changes to the determination of the amount in controversy in diversity removal cases. The amended removal statute allows a defendant to assert an amount in controversy in the notice of removal if the complaint seeks non-monetary relief or a money judgment, where state pleading practice either does not permit a demand for a specific sum or permits recovery of damages in excess of a specific demand. Additionally, when the initial state court pleading lacks information to support removal, the JVCA clarifies that a defendant may rely on state court discovery to establish the amount in controversy and later remove. The JVCA also permits defendants to remove more than one year after commencement of the action if they can show that the plaintiff acted in bad faith to prevent removal, such as by deliberately failing to disclose the actual amount in controversy. The JVCA also clarifies that, when removal is based on an amount in controversy asserted in the notice of removal (as opposed to an amount specifically demanded in the complaint), removal is proper if the district court finds by a preponderance of the evidence that the amount in controversy requirement is met. The JVCA thereby rejects more rigorous burdens of proof, such as the “legal certainty” standard, that had been fashioned by some courts.

28 U.S.C. § 1441(c) presently authorizes a defendant to remove the entire case whenever a separate and independent federal question claim is joined with one or more non-removable state law claims. Some courts have found this provision unconstitutional while others have chosen simply to remand the entire case to the state court. The JVCA resolves this issue by permitting the removal of the case but requiring that a district court remand unrelated state law claims that are not within the federal court’s original or supplemental jurisdiction.

The JVCA also resolves a split in authority regarding the residence of parties for venue purposes by adopting the majority rule that, for venue, a natural person will be deemed to reside in the judicial district in which that person is domiciled. Additionally, litigants may now stipulate to the transfer of venue to any district or division, even to a district or division where the action could not have been originally brought, so long as the court finds it to be for the convenience of the parties and witnesses and in the interest of justice.

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The JVCA makes numerous other changes to jurisdiction in suits between aliens, the residency of non-resident aliens, and venue as to foreign corporations. The act also reorganizes for clarity purposes many of the jurisdiction statutes found in Title 28 of the U.S. Code.

Finally, the JVCA's changes to the diversity and removal statutes do not appear to apply to class actions filed or removed under CAFA, 28 U.S.C. §§ 1332(d) and 1453. The JVCA's changes would, however, apply to class actions that do not qualify for CAFA removal, but which are removed pursuant to 28 U.S.C. § 1332(a).



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