

New Law Takes Effect Regarding Venue, Removal

January 11, 2012 by [Sean Wajert](#)

For all the litigators out there, a reminder that The Federal Courts Jurisdiction and Venue Clarification Act of 2011, [H.R. 394, P.L. 112-63](#), took effect last week. The act amends the federal jurisdictional statutes regarding diversity jurisdiction (28 U.S.C. § 1332), venue (28 U.S.C. §§ 1390-92, 1404), and removal (28 U.S.C. §§ 1441, 1446, 1454). Legislative history [here](#).

Among its provision, the new act states that, with respect to diversity, the district courts shall not have original jurisdiction of any civil action between citizens of a state, and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same state.

It modifies the citizenship rules to treat corporations as citizens of any foreign state: (1) by which it has been incorporated, and (2) where it has its principal place of business. It treats insurers as citizens of any foreign state: (1) of which the insured is a citizen, (2) by which the insurer has been incorporated, and (3) where the insurer has its principal place of business.

The law now dictates that, upon removal of any civil action with both removable and non-removable claims, the district court shall sever from the action all non-removable claims and remand them to the state court from which the action was removed. So no discretion to hold on to such claims.

The law prescribes revised requirements for filing notices of removal, including allowing statements in the notice of the amount in controversy, when it exceeds the necessary amount, if the initial pleading seeks: (1) non-monetary relief; or (2) a money judgment, but where the relevant state practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded. Removal of the action is proper on the basis of an amount in controversy asserted this way, if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount required.

Importantly, the law now allows removal of a case based on diversity of citizenship more than one year after commencement of the action if the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action. This deals with a common plaintiff tactic in mass torts, such as the inclusion of a treater simply to defeat diversity. In 1988, Congress amended the statute to prohibit the removal of diversity cases more than one year after their commencement. This change was intended to encourage prompt determination of issues of removal in diversity proceedings, and it sought to avoid the disruption of state court proceedings that might occur when changes in the case made it subject to removal. The change, however, led some plaintiffs to adopt removal-defeating strategies designed to keep the case in state court until after the 1-year deadline passed. In those situations, some courts have viewed the 1-year time limit as 'jurisdictional' and therefore an absolute limit on the district court's jurisdiction.

The new venue provision requires the issue of proper venue of any civil action brought in a U.S. district court to be determined without regard to whether the action is local or transitory in nature. It repeals the "local action" rule that any civil action, of a local nature, involving property located in different districts in the same state, may be brought in any of such districts. It also allows a district court to transfer a civil action to any district or division to which all parties have consented.

Significantly, the act resolves a circuit split regarding the time each defendant in a multi-defendant case has to file a notice of removal. Traditionally, the defendant had 30 days from receipt of the plaintiff's complaint to file a notice of removal. But in multi-defendant cases, some courts have adopted the "first-served" rule, under which each defendant in a case had 30 days from the date on which the *first defendant* was served, while others adopted the "later-served" rule, which gives each defendant a 30-day period to file a notice of removal after that defendant is served. The new law adopts the latter view (but keeps the unanimity rule.)