VENUE AND TRANSFER

Peter R. Jennetten
Quinn, Johnston, Henderson, Pretorius & Cerulo

Cases are occasionally filed in the wrong venue or at least one that is inconvenient. The venue statute determines where the suit should be decided. The transfer statute determines how it gets there if it starts out somewhere else.

I. The new Section 1390 definition of venue

A. Section 1390 generally

Section 1390 defines venue as "the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts." 28 USC §1390(a).

Why was this section necessary? The authors of the statute felt that venue under this statute could be confused with other statutes which determine where a case may be brought, but are jurisdictional. The definition helps clarify the distinction and that this statute does not impair the operation of these other statutes. The House Report on the bill explained: "Proposed subsection 1390(a) ("Venue Defined") would provide a general definition that distinguishes venue (a geographic specification of the appropriate forum for litigation) from other provisions of Federal law that operate as restrictions on subject-matter jurisdiction. Although such subject-matter restrictions may also include geographic terms, they differ from venue rules in that they may not be waived by the parties and will not be affected by changes in Chapter 87's general venue rules." H.R. REP. 112-10 at 17.

The distinction between subject matter jurisdiction and venue is important. Subject matter jurisdiction cannot be waived and can be raised at any point in the litigation either by the parties or *sua sponte* by the court or the Appellate Court. *Rice v. Rice Found.*, 610 F.2d 471, 474 (7th Cir. 1979). Improper venue does not deprive the court of jurisdiction. *Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 665, 73 S. Ct. 900, 902, 97 L. Ed. 1331 (1953) ("Section 1391 is a general venue statute. In a case where it applies, if its requirements are not satisfied, the District Court is not deprived of jurisdiction").

Subsection (b) of the statute excludes "Admiralty, Maritime and Prize cases." This rule codifies *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19 (1960) (holding the general transfer provisions apply to admiralty suits); *see also* Fed. R. Civ. P. 82 (noting

that an admiralty or maritime claim is not a "civil action" for purposes of the venue statute). In these cases, "the general admiralty practice prevails, in which venue and personal jurisdiction analyses merge. If the action is in personam, venue lies wherever valid service could have been made upon the defendant." *In re McDonnell-Douglas Corp.*, 647 F.2d 515, 516 (5th Cir. 1981).

B. Cure for improper venue vs. waiver

Objections to venue can be waived by failure to object or by contract. Any objection to venue must be raised in the first pleading filed or it may be deemed waived (Fed. R. Civ. P. 12(b)(3) (venue is one of the listed defenses under 12(b) which must be raised) and 12(h)(1) (defenses not raised are waived). This is also addressed by the statute: "Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue." 28 USC 1406(b). Objections to venue can also be waived by contract. *Heller Financial, Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1293 (7th Cir. 1989)(holding that one of 1404(a)'s factors — convenience of the parties — allows a party to contractually waive their right to assert their own inconvenience as a reason for transfer of venue).

If there is an objection, improper venue can be cured by transfer to or refiling in the proper court. 28 USC 1406(a): "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." If the case is dismissed, a refiling of the case in the proper venue will not relate back for purpose of the statute of limitations. If the statute of limitations has run, the Court should transfer the case in the interest of justice. *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 430 (1965); *Gold v. Griffith*, 190 F. Supp. 482, 483 (N.D. Ind. 1960). Transfer is discretionary with the court, however, and a case may be dismissed for improper venue even if the statute of limitations has run and the plaintiff will be unable to file a timely suit in the proper venue. *Cont'l Ins. Co. v. M/V ORSULA,* 354 F.3d 603, 607-08 (7th Cir. 2003) (dismissing case filed in wrong venue despite clear forum selection clause in bills of lading).

C. The statute does not change procedure for removal to federal court.

Cases must be removed to the District Court where the state action is pending (e.g., a state case filed in Peoria County must be removed to the Central District of Illinois, Peoria Division). 28 USC §1441(a). Subsection (c) makes clear that the venue statute does not change the removal procedure: "This chapter shall not determine the district court to which a civil action pending in a State court may be removed..."

This codifies the existing practice set forth in *Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 665–66 (1953) (venue removed in cases is controlled by the removal statute, rather than the general venue statute) *Polizzi* filed suit in the Circuit Court for Dade County, FL against a national corporation and the case was removed to U.S. Dist. Ct. for the S. Dist. of FL and dismissed under 28 U.S.C. § 1391 (general venue) for want of jurisdiction. The Supreme court held that section 1391 had no application in this case because it was a removed action. *Polizzi*, 345 U.S. at 665. Section 1391 deals with where an action may be brought. *Id*. This action was not "brought" in the District Court. The action was brought in state court and removed to the Dist. Ct. *Id*. at 666. The venue of removed actions is governed by 1441(a). *Id*. at 665. Section 1441(a) expressly provides that the proper venue of a removed action is "the district court of the United States for the district and division embracing the place where such action is pending." *Id*. at 666. The Southern District of Florida was the district embracing Dade County, the place where the action was pending so the case was remanded.

The new statute states that it governs all actions "brought" in the District Courts. Because removed cases are not "brought" in the District Court, the venue statute does not apply. As in *Polizzi*, the case properly removed cannot then be dismissed for lack of venue. It can be transferred, as the transfer statute applies to "any civil action." 28 USC §1404(a); *see also, Hollis v. Florida State University*, 259 F.3d 1295, 1300 (11th Cir. 2001) (noting the availability of transfer following removal of a case to Federal court); *Bentz v. Recile*, 778 F.2d 1026, 1027–1028 (5th Cir. 1985) (permitting removal and transfer for convenience of the parties even where action was removed from a state court that may have lacked jurisdiction over the defendant); *Kinney v. Anchorlock Corp.*, 736 F. Supp. 818, (N.D. Ill. 1990)(granting a motion for transfer of venue after removal).

II. Section 1391 – Proper venue of civil actions

A. Section 1391(a) – Creating a unified venue rule

What was wrong with the old section? The old statute created slightly different rules for diversity and federal question cases which are consolidated with the new unitary standard. Former 1391(a) applied to diversity actions and 1391(b) applied to all other actions, primarily federal question cases. The old sections were substantially identical, differing only slightly in the fallback provisions. Old 1391(a) provided for fallback venue in "a judicial district in which any defendant is subject to personal jurisdiction" and 1391(b) provided for venue "a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought."

Some statutes have their own peculiar venue rules. This general venue statute is intended to reduce the need for statute-specific rules, which will simplify things for both the courts and attorneys. H.R. REP. 112-10 at 18 ("A general venue statute may provide greater uniformity and lessen the need for special venue provisions in titles other than title 28.").

The amendment also abrogates the old "local action rule." H.R. REP. 112-10 at 18. Under the local action doctrine, courts may not exercise jurisdiction over any "local" action involving real property unless the property at issue is found within the territorial boundaries of the state where the court is sitting. *Bigio v. Coca-Cola Co.*, 239 F.3d 440, 449-50 (2nd Cir. 2000). The rule is common law that has been taken to require that "a suit, with federal jurisdiction based on diversity of citizenship, to recover damages for [a] defendant's alleged trespass upon, and unlawful use and occupation of, land in [a foreign country] . . . not be maintained in any jurisdiction except that in which the land was located." *Id*. at 450 (quoting *Pasos v. Pan American Airways, Inc.*, 229 F.2d 271 (2nd Cir. 1956)). The local action doctrine created problems for plaintiffs trying to assert their property rights outside of where their land is located. For instance, in *Ellenwood v. Marietta Chair Co.*, the Supreme Court held that an action for trespassing on land in West Virginia could not be maintained in a federal court in Ohio. 158 U.S. 105, 108 (1895). For a general discussion of the old rule, see 14D Fed. Prac. & Proc. Juris. § 3822 (3d ed.) (describing the development of the local action rule and the distinction between local and transitory cases). The House Report explained:

> "New paragraph 1391(a)(2) would end the use of the 'local action' rule, which provides that certain kinds of actions pertaining to real property may be brought only in the district in which the property is located. Such actions, deemed 'local,' differ from the transitory actions that may be brought in any court with jurisdiction over the dispute and parties. The rule has primarily caused problems in disputes over suits for damages due to a trespass, because the district court may not be able to exercise personal jurisdiction over the defendant in the place where the property is located. Thus, in such situations, a plaintiff would not be able to pursue his or her case." H.R. REP. 112-10 at 18.

As noted in the ALI Project, "[t]he virtually unanimous view of modern opinion is that the local-action rule serves no useful function as a device for allocating venue among the Federal courts. It is largely a creature of decisional law. . . ." ALI Project at 169. See, e.g., *Bigio v. Coca-Cola*, 239 F.3d 440, 449-450 (2nd Cir. 2000) (tracing local action rule to *Livingston v. Jefferson*, 15 Fed. Cas. 660 (C.C.D.Va. 1811)). H.R. REP. 112-10 at 18. Statutory restrictions on jurisdiction continue to apply. H.R. REP. 112-10 at 18-19.

The new statute addresses these problems with a unitary standard for venue. 28 USC §1391(a) ("Except as otherwise provided by law (1) this section shall govern the venue of all civil actions brought in district courts of the United States; and (2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature."). This provides a single venue rule for most cases, but preserves more specific venue rules contained in other statutes and eliminates the "local action rule."

B. Section 1391(b) - Venue in general

The old section could have the unintended consequence of dragging individual defendants to far-off jurisdictions when they are joined with other defendants, particularly corporations:

> "Presently, the language of paragraphs 1391(a)(1) and (b)(1) makes venue proper in 'a judicial district where any defendant resides, if all defendants reside in the same State.'Literally applied, this language could have unintended consequences. For example, consider a suit brought against both a resident (natural person) in Illinois and a corporation that does substantial business in every state, including Illinois, and the litigation arose from events that occurred in Illinois. Under current subsection 1391(c), the corporation could be considered a resident of Illinois and every other state, by virtue of its being subject to personal jurisdiction in all those states. A plaintiff might sue both defendants in any other district where the corporation happens to reside, such as the Southern District of New York, on the theory that, because all defendants reside in the same state (Illinois) as provided in 28 U.S.C. Sec. 1391(a) and (b), venue is proper in any other district where 'any defendant resides.' Proposed paragraph 1391(b)(1) would alter the statutory language to preclude such a result, while achieving the intended goal of the original statute." H.R. REP. 112-10 at 19.

This problem may have been more theoretical than real (the court would still have to obtain personal jurisdiction over the individual defendant), but the problem was fixed in the new venue statute, which provides:

> (b) Venue in General. — A civil action may be brought in —
>
> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

If the case involves multiple defendants from different states, venue must be determined by subsection (2) or (3). Subsection (1) applies only where the defendants are all residents of the same state. The new rule is discussed in *Phillips v. Wexford Health Sources, Inc.*, 11 C 2701, 2012 WL 1866377, at *2 (N.D. Ill. May 22, 2012) (finding venue was proper in the Northern District because one defendant was a resident of the northern district and all other defendants were residents of Illinois, even though the other defendants did not reside in the northern district).

Section 1391(b)(2) keeps the familiar language that venue is proper "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." This rule is unchanged from the old sections 1391(a)(2) and (b)(2). *See, Indianapolis Colts, Inc. v. Metro. Baltimore Football Club Ltd. P'ship,* 34 F.3d 410, 411–12 (7th Cir. 1994) (holding venue was proper in Indiana because the trademarks being defended by the Colts mainly resided in Indiana and would be primarily injured in Indiana). Given that subsection (1) is more restrictive than the prior statute, the new statute will require that more cases be filed where the incident occurred rather than were the defendants reside.

Section 1391(b)(3) provides a single fallback position for venue, replacing the slightly different standards for diversity and federal question cases in the old statute. If venue is not proper elsewhere, cases may be brought "any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action."

C. Section 1391(c)(1) – Residence of a natural person

What was wrong with the old section? The old statute referred to where the defendant "resides" rather than the defendant's "domicile," which led some courts to define residence more broadly than domicile. Thus, individuals could be considered a resident of a state or district where they were not domiciled. H.R. REP. 112-10 at 20-21; *Arley v. United Pac. Ins. Co.*, 379 F.2d 183, 185, n.1 (9th Cir. 1967) (citizens of Nevada were residents of and properly sued in Oregon). A majority of courts interpreted "resides" to be the defendant's domicile, borrowing the approach that governs citizenship for purposes of diversity of citizenship jurisdiction. However, a minority of circuit courts

(Second, Ninth and Tenth) interpreted residence more broadly than citizenship and permitted a defendant to be considered a resident of a state where he/she was not permanently domiciled (i.e. venue could be proper in a place where defendant had a summer home). H.R. Rep. 112-10 at 20-21.

The amendment fixed this problem by defining residence as the person's domicile. 28 USC §1391(c)(1) ("a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled"). As the Seventh Circuit followed the majority interpretation of the prior statute, practice here should be unchanged.

This section also now applies to resident aliens, who were previously addressed under subsection (c)(3), which is now limited to non-resident aliens. A legal resident alien is now treated the same as citizens for purposes of venue.

D. Section 1391(c)(2) – Residence of an entity

What was wrong with the old section? The old 1391(c) addressed the residence of corporations, but not unincorporated associations and other entities. Courts were split on whether old 1391(c) applied to unincorporated associations, such as unions, or whether they remained subject to *Denver & Rio Grande W. R. Co. v. Brotherhood of Railroad Trainmen*, 387 U.S. 556 (1967). H.R. REP. 112-10 at 21-22. *Denver and Rio Grande* held that the Brotherhood could be sued in any district in which it was doing business.

The amendment provides a uniform rule applicable to all entities including corporations, LLCs, partnerships and unincorporated associations. 28 USC §1391(c)(2); H.R. REP. 112-10 at 21-22.

> (2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business;

Note that the entity's residence is different when the entity sues as a plaintiff, versus when it is sued as a defendant. As a plaintiff, it resides only where it has its principal place of business. This will be significant in the uncommon situation where venue may be a function of the residence of the Plaintiff. The House reports note that these venue rules continue the trend away from the plaintiff-oriented venue and toward a focus on the convenience of the defendant. H.R. REP. 112-10 at 22.

E. Section 1391(c)(3) – Residence of non-U.S. residents

What was wrong with the old section? The old 1391(d) provided that an alien could be sued in any district, denying aliens a venue defense even if they were permanent residents domiciled in the U.S. The new law shifts the focus from alienage to residence. H.R. REP. 112-10 at 22-23. Non-resident aliens are disregarded if there are other defendants who reside in the U.S. (i.e. you cannot add a non-resident alien and choose to file the case in any district court). New 1391(c)(1) applies to permanent resident aliens domiciled in the U.S. Subsection(c)(3) still allows venue in any district when the defendant is a non-resident alien or a U.S. citizen domiciled abroad. Any defendant who is not a resident of the U.S. is governed by this section. 28 USC §1391(c)(3) ("a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.").

F. Section 1391(d) – Residence in states with more than one judicial district

The language of this section was taken from the old section 1391(c) to address the residence of corporations (but not other entities) in states having more than one judicial district, such as Illinois. The practice in this respect is unchanged.

G. Section 1391(e) regarding suits against officers and employees of the federal government is unchanged.

See, Reuben H. Donnelley Corp. v. F.T.C., 580 F.2d 264 (7th Cir. 1968).

H. Section 1391(f) regarding suits against foreign states is unchanged.

See, Rush-Presbyterian-St. Luke's Medical Center v. Hellenic Republic, 877 F.2d 574 (7th Cir. 1989).

I. Section 1391(g) regarding multiparty, multiform cases is unchanged.

See, Laukus v. U.S., 691 F.Supp.2d. 119, 126–27 (D.D.C. 2010)(holding 1391(g) was inapplicable).

J. Other statutes govern venue for certain actions.

There are statutes that address venue for specific actions (over 200 according to ALI). A special venue statute will control over the general venue statutes found in §1391. 14D Charles Alan Wright et al., Federal Practice & Procedure § 3803 (3d ed. 2012). When there is a conflict between two special venue statutes, the venue provisions in the statute of narrower application usually will control over a statute that covers a broader range of cases, regardless of the relative priority of the statutes' enactments. *Id*. One illustrative case is *Radzanower v. Touche Ross & Co.*, 426 U.S. 148 (1976), in which the Supreme Court held that when a national bank is charged with violating the Securities and Exchange Act of 1934, the venue provisions of the National Bank Act control over the venue rules of the broader Securities and Exchange Act. *Id*. The Court wrote that "where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Id*. The Court noted that the National Bank Act was established to address the "particularized problems" of the national banks, whereas the Securities and Exchange Act was intended to promote fair dealing in the securities markets; thus, the application of the venue rules found in the former act would not undermine the latter act's general goal of regulating the securities markets. *Id*.

One common special venue provision is the Clayton Act, 15 U.S.C. § 22, which provides that "Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business." This provision is discussed in *Tiger Trash v. Browning-Ferris Indus.*, 560 F.2d 818, 824 (7th Cir. 1977) (Noting that it was Congress' intent in passing the Clayton Act to liberalize the restrictive venue provisions of the Sherman Act). The general venue statute in §1391 will not control cases based upon the Clayton Act.

III. Section 1392 repealed

Since the amendments abolish the local-action rule, this section was deemed unnecessary and repealed. The old local action rule is discussed in *Raphael J. Musicus, Inc. v. Safeway Stores, Inc.*, 743 F.2d 503 (7th Cir. 1984) (holding "in order to provide *in rem* relief, the court must have jurisdiction over the real property at issue, and a local action must therefore be brought in the jurisdiction in which that real property is located"). This case demonstrates how the old §1392 indirectly incorporated the common law local action rule. Because it incorporated the local action rule, the old §1392 created confusion on whether actions of a local nature were defined by state or federal law. As the Seventh Circuit in *Musicus* held, "while a determination of proper venue is clearly a matter of federal law, it is unclear whether the federal statute should be interpreted by reference to general law, including the decisions of both state and

federal courts, or by reference specifically to the law of the forum state, in this case Illinois. Issues involving real property are often resolved by reference to state law, and thus a strong argument for adopting the law of the forum can be made." *Id*. at 506. This problem no longer exists.

IV. An example

Suppose the plaintiff from Michigan, driving his car through Pekin, is struck by a truck from Iowa. The truck is owned by an Iowa corporation with its principal place of business in Bettendorf, Iowa, where the truck driver also resides. Plaintiff wishes to make a federal case against the driver and his employer. Where is venue proper? Under §1391(b)(1), suit could be filed in the District Court for Northern District of Iowa, as all of the defendants are residents of Iowa. Under §1391(b)(2) suit could be filed in the Central District of Illinois, where the accident occurred.

Suppose instead that the driver of the truck resides in Madison, Wisconsin and that the trucking company operates only in Illinois and Iowa. Because the defendants are not residents of the same state, venue is not proper in either Iowa or Wisconsin under subsection (b)(1), but remains proper in the Central District of Illinois under (b)(2).

V. Section 1404 – Transfer of Venue

A. Section 1404(a)

What was wrong with the old section? Old 1404(a) limited transfers to districts where the case could have been filed. This excluded other districts which might be more convenient for the parties. The amendment adds a clause allowing the parties to consent to a district other than one where the case could have been filed originally:

> (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

Note that a case cannot be filed in such a district initially. It must be filed in a district with proper venue and then transferred. The consent clause maintains the requirement from the beginning of 1404(a) that the transfer be "for the convenience of parties and witnesses" and "in the interest of justice." You cannot stipulate to a transfer to Puerto Rico unless you can show that it is convenient for the parties and witnesses and in the interest of justice.

Section 1404(a) is discussed in *Research Automation, Inc. v. Schrader-Bridgeport Intern., Inc.*, 626 F.3d 973 (7th Cir. 2010) (upholding transfer of case from Illinois to Virginia). In that case, the Seventh Circuit provided that "a substantial degree of deference is given to the District Court in deciding whether transfer is appropriate." *Id.* at 977–78. With respect to the "convenience of parties and witnesses" evaluation, the following factors were provided: availability of and access to witnesses, each party's access to and distance from resources in each forum, the location of material events, and the relative ease of access to sources of proof. *Id*. at 978. The "interest of justice" factors included: docket congestion, likely speed to trial in the transferor and potential transferee forums, each court's relative familiarity with the relevant law, the respective desirability of resolving controversies in each locale, and the relationship of each community to the controversy. *Id*.

Note that the statute applies to "any civil action" including removed cases or other cases that are not within the general venue statute. Even cases whose venue is determined by other statutes (e.g., admiralty law) may be transferred under this section. *In re McDonnell-Douglas Corp.*, 647 F.2d 515, 516 (5th Cir. 1981).

Also note that §1404 applies only to cases which were originally filed in an appropriate venue. Cases which are filed in the wrong venue are subject to dismissal or transfer under 28 U.S.C. §1406.

B. Section 1404(b) regarding transfer to a different division within the same district is unchanged.

C. Section 1404(c) regarding the location of trial within a district is unchanged.

D. Section 1404(d)

What was wrong with the old section? With the change to allow consent to venue under subparagraph (a), this section would have allowed transfer from Article III courts to certain territorial courts which are not Article III courts. H.R. REP. 112-10. This was for some reason deemed undesirable. This flaw was fixed by defining the term "district court" to include "District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands" unless you want to transfer a case there. If you want to transfer to or from there, they do not count as District Courts. The statute now provides:

(d) Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

VI. Effective Date

The amendments apply to actions filed on or after January 7, 2011, regardless of when they are removed to federal court. Pub. L. 112–63, title II, § 205,Dec. 7, 2011, 125 Stat. 764, provided that:

> The amendments made by this title (1) shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act [Dec. 7, 2011]; and (2) shall apply to – (A) any action that is commenced in a United States district court on or after such effective date; and (B) any action that is removed from a State court to a United States district court and that had been commenced, within the meaning of State law, on or after such effective date.

VII. Additional reading

A. House Report on H.R. 394 – H.R. REP. 112-10, H.R. Rep. No. 10, 112TH Cong., 1ST Sess. 2011, 2011 WL 484052, 2011 U.S.C.C.A.N. 576.

B. American Law Institute, Federal Judicial Code Revision Project, Part III, Removal, (2004) (ALI Project).

C. *Caldera Pharmaceuticals, Inc. v. Los Alamos Nat. Sec., LLC*, 10 C 6347, 2012 WL 245115, __ F.Supp.2d __ (N.D. Ill. Jan. 26, 2012) (transferring case to New Mexico).

D. *Peddinghaus Corp. v. Controlled Automation*, 11-2187, 2012 WL 848149 (C.D. Ill. Feb. 22, 2012) report and recommendation adopted, 11-CV-2187, 2012 WL 848144 (C.D. Ill. Mar. 13, 2012) (denying motion to transfer).

E. Arthur Hellman, The Federal Courts Jurisdiction and Venue Clarification Act: Some Missing Pieces, JURIST - Forum, Jan. 4, 2012, http://jurist.org/forum/2012/01/arthur-hellman-jvca-ii.php (discussing issues left unresolved by the amendments).

Side-by-side comparison of old and new statutes regarding venue and transfer

New Section	Old Text	New Text
1390 (a)	N/A	(a) Venue Defined.— As used in this chapter, the term "venue" refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.
1390 (b)	N/A	(b) Exclusion of Certain Cases.— Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by section 1333 [Admiralty, Maritime and Prize], except that such civil actions may be transferred between district courts as provided in this chapter.
1390 (c)	N/A	(c) Clarification Regarding Cases Removed From State Courts.— This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.

1391(a)	(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.	(a) Applicability of Section.— Except as otherwise provided by law— (1) this section shall govern the venue of all civil actions brought in district courts of the United States; and (2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.
1391(b)	(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.	(b) Venue in General.— A civil action may be brought in— (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

1391(c)	(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.	(c) Residency.— For all venue purposes— (1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled; (2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and (3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.
1391(d)	(d) An alien may be sued in any district.	(d) Residency of Corporations in States With Multiple Districts.— For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts. **[essentially unchanged from old 1391(c)]**

1391(e)	(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party. The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought. **[NO CHANGES]**	(e) Actions Where Defendant Is Officer or Employee of the United States.— (1) In general.— A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party. (2) Service.— The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

1391(f)	(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought— (1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; (2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title; (3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or (4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof. **[NO CHANGES]**	(f) Civil Actions Against a Foreign State.—A civil action against a foreign state as defined in section 1603 (a) of this title may be brought— (1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; (2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605 (b) of this title; (3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603 (b) of this title; or (4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.
1391(g)	(g) A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place. **[NO CHANGES]**	(g) Multiparty, Multiforum Litigation.— A civil action in which jurisdiction of the district court is based upon section 1369 [Multiparty, multiforum jurisdiction] of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.
1392	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.	N/A [Repealed] (see new 1391(a)(2)).
1404(a)	(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.	(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

1404(b)	(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer. **[NO CHANGES]**	(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.
1404(c)	(c) A district court may order any civil action to be tried at any place within the division in which it is pending. **[NO CHANGES]**	(c) A district court may order any civil action to be tried at any place within the division in which it is pending.
1404(d)	(d) As used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.	(d) Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.