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Federal Courts--Diversity Jurisdiction--Corporate Citizenship at its Principal Place of Business

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FEDERAL COURTS—DIVERSITY JURISDICTION—CORPORATE CITIZENSHIP AT ITS PRINCIPAL PLACE OF BUSINESS.—In 1958, Congress altered the original jurisdiction of United States District Courts by providing that a corporation is to be deemed a citizen of the state in which it has its principal place of business in addition to the state wherein it is incorporated. Pub.L. 85-554, 28 U.S.C. § 1332 (c). Prior to this, except for those instances involving multi-state corporations, a corporation was considered a citizen only of the state of its incorporation, regardless of the fact that the corporation might not have any offices or employees in the incorporation state. *Marshall v. Baltimore & Ohio RR. Co.*, 57 U.S. 314 (1853).

Apparently this amendment is an attempt to reduce the number of cases which either arise in, or are removed to federal district courts. The number of cases in the federal courts based on diversity of citizenship jurisdiction has risen sixty-two per cent from 1946 to 1956. S. Rep. No. 1930, 85th Cong., 2d Sess. 5 (1958); H. R. Rep. No. 1706, 85th Cong., 2d Sess. 5 (1958). Along with the amendment to sub-section (a) of 28 U.S.C. § 1332, which raised the amount in controversy minimum from \$3,000 to \$10,000, section (c) is a legislative attempt to limit access to federal courts. *Johnson v. Angelina Casualty Co.*, 177 F.Supp. 85 (E.D. Tex. 1959); *Diesing v. Vaughn Wood Products, Inc.*, 175 F.Supp. 460 (W.D.Va. 1959); *Harker v. Kopp*, 172 F.Supp. 180 (N.D.Ill. 1959).

The principal place of business test was aimed at preventing a wholly local corporation, which had been incorporated in another state, when sued by a citizen of the state where all its business is located, the right to select that forum which best suited its needs. It is generally recognized that a corporation, while it is located primarily or completely in state A, may have obtained its corporate charter in state B because of tax or corporate benefits which are not available in state A. Such a corporation has an inequitable advantage over another corporation which also may have its primary business in state A, but which was also incorporated therein. The first corporation has its choice of going to the federal court whenever it desires if sued by a citizen of state A, although for all intents and purposes it is a citizen of the same state. Such a situation is unconscionable with the primary reason for diversity jurisdiction; which was to relieve the fear that prejudice by the citizens of one state toward those of another would lead to unjust treatment of citizens of other states. *Lumbermen's Mutual Casualty Co. v. Elbert*, 348 U.S. 48 (1954). To prevent the afore-

mentioned situation, whereby a state corporation had free access to the federal courts simply because it does business under a foreign charter, section (c) was inacted, *Riley v. Gulf, Mobile & Ohio RR. Co.*, 173 F.Supp. 416 (S.D.Ill. 1959).

Acquiescing in the necessity for a change in the federal diversity jurisdiction statute, another problem is raised by section (c) as to the exoteric determinative of the phrase 'principal place of business'. The Committee reports which accompany section (c) indicate that there is sufficient precedence in the Bankruptcy Act, 66 Stat. 420, 11 U.S.C. § 11, which has a similar provision, for interpreting the principal place of business of a corporation. Under the Bankruptcy Act, the principal place of business of an organization or an individual has normally been held to be a question of fact depending upon the circumstances of each particular case. *In re American & British Mfg. Corp.*, 300 Fed. 839 (D.C.Conn. 1924). Such a subjective test is ambiguous; and has been criticized in regard to its applicability to section (c). Freidenthal, *New Limitations on Federal Jurisdiction*, 11 STAN. L. REV. 213, 223 (1959).

A number of cases arising under the Bankruptcy Act have held that the principal place of business of a corporation is usually that state in which the main offices are located. *E.g., In re Hudson River Nav. Co.*, 59 F.2d 971 (2nd Cir. 1932). Professor Freidenthal, in his article, *supra*, points out that some cases have used the location of the place of production as the determining factor in assessing the principal place of business of a corporation. As authority for this proposition, Professor Friedenthal relies on *Continental Coal Corp. v. Roszelle Bros.*, 242 Fed. 243 (6th Cir. 1917). However, as indicated in *Scot Typewriter Co., v. Underwood Corp.*, 170 F.Supp. 862 (S.D.N.Y. 1959), the *Hudson River* case distinguishes the latter case so that its principles are no longer particularly applicable.

Among the District Courts considering what constitutes a corporation's principal place of business under section (c), several tests have arisen. In *Bryfogle v. Acme Market, Inc.*, 176 F.Supp. 43 (E.D.Pa. 1959), the court held that since the defendant corporation's business was done mainly in Pennsylvania, and since the main offices of the corporation were in the same state, Pennsylvania was the defendant's principal place of business. However in *Hughes v. United Engineers & Constructors, Inc.*, 178 F.Supp. 895 (S.D.N.Y. 1959), another court refused to decide whether the situs of the main offices of a corporation necessarily constituted that corporation's principal place of business.

In the well considered opinion of *Scot Typewriter Co. v. Underwood Corp.*, *supra*, the court held that a corporation's principal place of business was its 'nerve center'; that one point where a corporation engaged in wide and varied activities in numerous states has the control and direction of all the activities of the corporation without regard to locale. This test would seem to be particularly applicable in those cases where the corporation has numerous operations in a number of states, as in this case where the defendant corporation had its largest place of production in a state removed from the 'nerve center'. At least such a test as this would enable corporation's to have a succinct principle to apply to its jurisdictional problems.

The District Court in Pennsylvania adhered to the theory that each case should be decided on the basis of a survey of the corporation's activities, in respect to their character, importance and amount. *Moesser v. Crucible Steel Co.*, 173 F.Supp. 953 (W.D. Pa. 1959). In order to make a determination of the defendant's principal place of business, the court propounded twelve questions including: (a) gross value of products manufactured in Pennsylvania as compared to those produced in other states, (b) number of employees in Pennsylvania as compared to those in other states, (c) character of the corporation, (d) purposes of the corporation, (e) kind of business of the corporation, (f) situs of its operations, (g) location of the supervisory offices, (h) location of public relations, etc., (i) location of largest payroll, (j) location of tangible property, (k) location of most of purchases, and (l) location of controlling offices. The answers to these questions would give a court the proper information by which it could determine the principal place of business of any corporation.

Although this question has yet to be decided by a United States Circuit Court of Appeals, still the district courts have established a judicial foundation which would probably be applied by any appellate court considering the problem. The main office or nerve center test would seem to be the most feasible test, if for no other reasons than convenience and relative ease of application and understanding. The main office test would prevent there being more than one principal place of business for any corporation, no matter how diversified its operations, something which other tests might not prevent.

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