Miller
LAW GROUP

Employment Law Alert

March 4, 2010

Supreme Court Adopts "Nerve Center" Test for Corporate Citizenship, Helping to Clarify When Multi-State Companies May Remove Lawsuits to Federal Court

In a brand new decision, the United States Supreme Court has clarified when corporations may remove lawsuits from state to federal court based on "diversity jurisdiction." In order to establish diversity jurisdiction, parties to a lawsuit must be "citizens" of different states, and a corporation is considered a citizen of (1) its state of incorporation, and (2) the state where it has its "principal place of business." By defining the term "principal place of business," the Court in *Hertz Corp. v. Friend*, 2010 U.S. LEXIS 1897, has now provided companies doing business in more than one state the ability to better predict if lawsuits brought against them can be removed to federal courts.

111 SUTTER STREET
SUITE 700
SAN FRANCISCO
CA 94104
415 464 4300 T
415 464 4336 F

The case involved a wage and hour class action originally filed in California state court by current and former Hertz employees who were California citizens. Hertz is incorporated in Delaware, with corporate headquarters in New Jersey. Hertz attempted to remove the lawsuit from Alameda County Superior Court to the United States District Court for the Northern District of California, claiming that it and the employees were citizens of different states and thus met the federal court requirements for diversity-of-citizenship jurisdiction.

The District Court disagreed, finding that Hertz was a California citizen (in addition to Delaware where it is incorporated) because, among other things, Hertz's business activity in California was "significantly larger" or "substantially predominated" over its business activity in all other states. Thus, the District Court found that Hertz's "principal place of business" was California and sent the case back to the state court on the basis that there existed no "diversity-of-citizenship." The Ninth Circuit Court of Appeals affirmed.

Hertz appealed to the U.S. Supreme Court, which found in Hertz's favor. The Court noted that Hertz operated facilities in 44 states and that Hertz's leadership and core executive and administrative functions are primarily carried out in New Jersey, not California. The Court clarified that the phrase "principal place of business" refers to "the place where a corporation's high level officers direct, control and coordinate the corporation's activities, *i.e.*, its 'nerve center,' which will typically be found at its corporate headquarters." As a

result, the Court focused the analysis on where companies *run their business* rather than on where companies *do business*.

The Supreme Court also noted that companies could not manipulate the "nerve center" test by simply having "a mail drop box, a bare office with a computer, or the location of an annual executive retreat" as its so-called principal place of business. Courts should focus on where the actual direction, control and coordination of the business occurs –typically the corporate headquarters.

By clarifying the definition of "principal place of business" for diversity jurisdiction purposes, the Supreme Court resolved a long-standing conflict between jurisdictions about what constitutes a company's "principal place of business." As a result, companies now have more certainty regarding when removal based on diversity jurisdiction is appropriate and will be upheld.

For over a decade, Miller Law Group has devoted its practice exclusively to representing business in all aspects of California employment law and related litigation. If you have questions about these new developments or your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call 415-464-4300.

This Alert is published by Miller Law Group to review recent developments in employment law. This material is designed to provide informative and current information as of the date of the Alert, and should not be considered legal advice.