

Supreme Court Adopts “Nerve Center” Test For Corporations’ Citizenship

BY FARROKH JHABVALA

In *Hertz Corp. v. Friend*, the Supreme Court resolved a split between the Circuits on the issue of a corporation’s citizenship for purposes of the federal diversity statute, 28 U.S.C. § 1332(c)(1), which states that for the purposes of the diversity and removal statutes “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business” *Hertz* discusses the history and development of a corporation’s citizenship from the earliest days of the republic to 1958, when Congress enacted the present wording of § 1332(c)(1). The decision also discusses the difficulties encountered with the phrase “principal place of business,” and the growing welter of tests that resulted in “different circuits (and sometimes different courts within a single circuit) ... [applying] these highly general multifactor tests in different ways.”

In seeking to reimpose fidelity to the statute’s language, and to provide administrative simplicity and clarity to a jurisdictional statute, *Hertz* concludes that “‘principal place of business’ is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities,” the location the courts of appeal call the corporation’s “nerve center.” The decision explains that a corporation’s “nerve center” is “usually its main headquarters, [and] is a single place.” The decision concedes that “there may be no perfect test that satisfies all administrative and purposive criteria,” and that under the “nerve center” test “there will be hard cases,” anticipating that creative lawyering and business exigencies will pose challenges to its new definition of a corporation’s principal place of business.



A company is where its nerve center is

Variations in Unjust Enrichment Laws Bar Class Certification

BY CLIFTON GRUHN

In *Tyler v. Alltel Corp.*, the District Court for the Eastern District of Arkansas denied certification of a multistate class action asserting claims for unjust enrichment, because resolution of the case would necessitate analysis of 25 states’ unjust enrichment laws. The plaintiff sought to certify a Rule 23(b)(3) class of Alltel wireless customers who were charged an early contract termination fee, as well as a 23(b)(2) class of customers who would be subject to the fee. The court noted that when a putative class consists of persons from numerous states pursuing common law claims, a court “must conduct a choice of law analysis before considering the requirements of Rule 23.”



Static-free message from court

The court’s analysis led it to conclude that Arkansas’ unjust enrichment laws differed in material respects from the other states’ laws and that Arkansas law would not apply to all the putative class members’ claims. The court would have to apply the laws of the class members’ home states or the law of the state where the members signed their wireless phone contracts to each class member’s claim. Thus, application of the varied unjust enrichment laws to the putative class members’ claims precluded class certification under Rule 23(b)(3) due to the lack of commonality and predominance. The court also concluded that, although commonality and predominance are not factors under Rule 23(b)(2), the plaintiff was required to show class cohesion for a (b)(2) certification, and that the requisite cohesion could not be demonstrated where the laws applicable to the class members’ claims were “notably different.”