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**Gallagher Sharp Newsflash: Removal to Federal Court**

On January 6, 2012, a new federal law known as the Federal Courts Jurisdiction and Venue Clarification Act of 2011, H. R. 394, P.L 112-63 (the "Act"), took effect. The Act contains some major changes to the removal statute, 28 U.S.C. § 1441, which will affect new cases filed or removed to federal court based upon diversity (the plaintiff and defendants being from different states) and federal question jurisdiction. The changes brought about by the Act are intended to clear-up confusion and disagreement among various courts regarding the timing of removal in cases with multiple defendants, determinations of amount in controversy, and venue. Here is a summary of some of the more significant changes brought about by the Act:

**Removal:**

The new law addresses a conflict between federal court over the statutory 30-day period for removing cases originally filed in state court to federal court. Over the years, the federal courts had disagreed over how to interpret the law in cases with multiple defendants who were served with the complaint at different times. The new rules now provide that each defendant will have 30 days from his or her own date of service in order to seek removal. Earlier-served defendants who did not seek removal on their own are allowed to join in or consent to removal by another later-served defendant. The law also codifies the judiciary created "rule of unanimity," set forth over a century ago by the Supreme Court of the United States, requiring all defendants to consent to removal.

The Act adds a "bad faith" exception to the established rule that a case cannot be removed from state to federal court more than one year after the complaint was filed in state court. Under the new law, if it is found that a plaintiff added a non-diverse defendant in bad faith in order to defeat removal based upon diversity jurisdiction, the federal court may disregard the one year limitation and allow the remaining diverse defendant(s) to remove the case.

**Amount in Controversy:**

The Act also changes how the \$75,000.00 amount in controversy for purposes of removal is ascertained and determined. First, the Act provides that a state pleading without a specific allegation of an amount in controversy may still be removed, even after the 30-day period expires, if discovery received from the plaintiff establishes that the threshold jurisdictional amount is met. However, if the amount in controversy is discovered to equal or exceed \$75,000.00 more than one year after the plaintiff filed the complaint, the defendant will not be able to remove the case to federal court, unless there is a finding of bad faith.

In cases where state practice does not permit a specific monetary demand or where recovery may be in excess of the demand, defendants will now be authorized to allege the amount in controversy in the removal notice when the initial pleading seeks non-monetary relief. The Act also adopts the rule, recognized by the majority of courts, requiring that the amount be shown by "the preponderance of the evidence," rejecting other judicial decisions imposing a conflicting standard.

**Venue:**

The Act also alters how venue in federal court cases are assigned, especially where there are several different districts in a case. The revisions made to the federal venue statute, 28 U. S. C. §§ 1390 et seq., will resolve the question of residency for the purposes of venue adopting the majority standard that

residency is a natural person's state of domicile, the same standard used in the determination of citizenship for diversity jurisdiction. And litigants may now stipulate to the transfer of venue to a district where the lawsuit may otherwise have not originally been brought "for the convenience of the parties and witnesses and in the interest of justice."

**Jurisdiction Over State Law Claims After Removal:**

When a case is removed to federal court based on federal question jurisdiction rather than diversity jurisdiction, the Act changes how the federal courts are to deal with unrelated state law claims. Under former practice, the federal court could exercise some discretion in deciding whether the unrelated state claims should be severed from the federal claims and remanded back to state court. Under the new rules adopted by the Act, federal judges no longer have this discretion but are required to sever and remand any unrelated state claims that fall outside the federal court's supplemental jurisdiction.

The changes implemented by the Act will require all federal practice litigators to reconsider longstanding litigation strategies when confronted with the need to make decisions regarding removal of a case to federal court.

A link to the Act is at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr394enr/pdf/BILLS-112hr394enr.pdf>

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