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Supreme Court Hears Argument in Case Affecting Corporate Defendants' Access to Federal Courts

On November 10, 2009, the U.S. Supreme Court heard oral argument in *Hertz Corp. v. Friend*.¹ The case asks the Court to clarify the standard for determining a company's "principal place of business" for invoking federal court jurisdiction in cases where a corporate party does business in multiple states. The Court's holding will affect corporate defendants' ability to remove cases to federal court on the basis of diversity jurisdiction.

In *Hertz*, a putative class of Hertz employees filed suit in California state court. Hertz removed the case to federal court based on diversity of citizenship, claiming its principal place of business is New Jersey, where its corporate headquarters is located. Plaintiffs successfully remanded the case to state court on the ground that the plurality of Hertz's business occurs in California, making it a citizen of that state, which defeated diversity jurisdiction. Hertz appealed, and the Ninth Circuit Court of Appeals held that even though Hertz is a Delaware corporation with its corporate headquarters in New Jersey, Hertz is a California citizen for diversity purposes because a "substantial predominance" of the corporation's operations occur in California.² The holding was based on the fact that Hertz conducts 20% of its business in California, more than in any other state.³ The Ninth Circuit's decision applying a "place of operations" test to determine citizenship for diversity purposes conflicts with cases from other circuits, which apply variations of a "nerve center test" focused on the location of a corporation's headquarters.⁴ At oral argument before the Supreme Court this week, the justices' questions suggested skepticism of the argument that citizenship should be determined only by the place of business activities without considering the location of a company's headquarters.⁵

A resolution of the circuit split on the test for determining corporate citizenship will affect the standards for removal of cases to federal court. An updated legal alert will be circulated when a decision is issued.



If you have any questions regarding this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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¹ Case No. 08-1107 (argued Nov. 10, 2009).

² *Friend v. Hertz Corp.*, 297 Fed. Appx. 690 (9th Cir. 2008).

³ *See id.*; *see also* Transcript of Supreme Court Oral Argument at 15.

⁴ *See Metropolitan Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991) (applying a bright line "nerve center" test); *CGB Occupational Therapy v. RHA Health*, 357 F.3d 375 (3d Cir. 2004) (applying a nerve center test that can be overcome by weighing a variety of factors); *Diaz-Rodriguez v. Pep Boys Corp.*, 410 F.3d 56 (1st Cir. 2005) (same).

⁵ *See* Transcript of Supreme Court Oral Argument.