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Emerging Trend Against Nationwide Venue In Antitrust Cases



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Law360, New York (December 04, 2013, 2:27 PM ET) -- For over two decades now, a circuit split has been brewing on how to answer an important but seemingly straightforward question: Has Congress enacted nationwide venue in federal civil antitrust cases against corporate defendants? The source of this controversy is the two short clauses that compose the one-sentence venue provision in Section 12 of the Clayton Act, with one clause limiting venue over corporate antitrust defendants and the other authorizing nationwide service of process:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.[1]

Some courts have interpreted these clauses independently, letting a plaintiff use Section 12's nationwide service-of-process provision to establish personal jurisdiction in any judicial district and then use the general venue statute, 28 U.S.C. § 1391, to establish proper venue based on personal jurisdiction over each defendant. Despite both provisions' limitations on venue, this result permits a corporate antitrust defendant to be sued anywhere in the United States. The U.S. Court of Appeals for the Ninth Circuit adopted this view in 1989,[2] and in 2004, the Third Circuit joined the Ninth Circuit, but only as to alien (non-U.S.) corporate defendants.[3]

Earlier this year, however, the Seventh Circuit took the opposite view in a case called KM Enterprises, finding that the Clayton Act's nationwide service-of-process and venue clauses must be read as an integrated whole.[4] The circuit thus rejected the idea that antitrust plaintiffs could "mix and match" the Clayton Act's nationwide service-of-process provision with the general federal venue statute, creating "universal venue" for antitrust claims "in every judicial district in the United States."[5]

As the third federal appeals court to reach this conclusion, following earlier decisions by the Second[6] and D.C.[7] Circuits, respectively, the Seventh Circuit's ruling may mark a tipping point among federal appeals courts, commanding influence within other circuits that have yet to decide whether the Clayton

Act, in effect, permits "nationwide venue" in antitrust cases.[8] And these circuits may need to decide this issue sooner rather than later, given the recent 47.8 percent rise in federal antitrust litigation from 475 cases in 2011 to 702 cases in 2012, according to the Administrative Office of the U.S. Courts.[9]

In this regard, the facts of KM Enterprises indicate how this issue may reach these other courts. Both KM Enterprises and Global Traffic Technologies manufacture devices that enable emergency vehicles to change traffic lights in their favor.[10] This rivalry led KM — an Illinois corporation — to sue Global Traffic in the Southern District of Illinois, accusing Global Traffic of monopolistic activity and bid-rigging in violation of federal antitrust law.[11]

A Delaware corporation headquartered in Minnesota, Global Traffic's presence in the Southern District of Illinois was limited to: (1) "six direct sales to buyers in the district over a four-year period, totaling $2,327.25, or .002%" of Global Traffic's total sales over this period; and (2) "two meetings" with KM representatives at which Global Traffic offered to buy KM's business.[12] The district court thus granted Global Traffic's motion-to-dismiss for lack of proper venue, finding that Global Traffic's "contacts with the district could not support venue under 28 U.S.C. § 1391."[13]

On appeal, KM argued to the Seventh Circuit that venue was proper in the case based on a "mixing and matching among the service-of-process and venue provisions of Section 12 and Section 1391."[14] KM's argument that venue was proper in the Southern District of Illinois rested on a three-step syllogism. First, Section 12 of the Clayton Act allowed for service upon corporate antitrust defendants like Global Traffic anywhere in the nation.[15]

Second, since Global Traffic was served in this way, personal jurisdiction over Global Traffic in Illinois was automatically proper because "[w]hen Congress has enacted such nationwide service of process statutes, personal jurisdiction exists whenever the defendant has 'sufficient minimum contacts with the United States' to satisfy ... due process requirements."[16]

Third, venue of KM's case was proper in turn because under 28 U.S.C. § 1391(b)(1), venue is always proper in "a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located" — and, per 28 U.S.C. § 1391(c)(2), a corporate defendant like Global Traffic is deemed to "reside" in "any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question."[17]

The Seventh Circuit disagreed. Recognizing how KM's argument decoupled the Clayton Act's nationwide service-of-process clause from the act's venue clause, the circuit painted the stakes of KM's argument as follows:

If the [act's] clauses are read together, then there exist some limits on where a corporate antitrust defendant may be sued. ... [U]nder [the Clayton Act], venue is proper only in the district(s) the corporation inhabits, is found, or transacts business. ... But if the plaintiff relies on the Clayton Act's nationwide service of process to secure personal jurisdiction, then for purposes of Section 1391 the corporate defendant would 'reside' in every judicial district in the country and venue would be proper everywhere.[18]

At the same time, while the Seventh Circuit expressly joined the Second and D.C. Circuits in holding that "Section 12's venue and service-of-process provisions must be read together," the circuit also found that "the language of Section 12 too ambiguous to rely on the 'plain meaning' rationale endorsed by the Second and D.C. Circuits."[19] This led the circuit to highlight "the practical effects of decoupling the clauses of Section 12" — effects "too bizarre and contrary to Congress's apparent intent for [the court] to endorse."[20]

Significant among these effects was the basic reality that "allowing antitrust plaintiffs to mix and match Section 12's service-of-process provision with Section 1391's general venue provision [would] render[] the venue inquiry meaningless. ... This runs contrary to Congress's apparent intent in passing Sections 12 and 1391 that there be some limits on venue, in antitrust cases specifically and in general."[21]

Having concluded that KM could not mix-and-match the venue requirements of Section 12 with the venue requirements of Section 1391, the Seventh Circuit affirmed the district court's finding that venue was improper in KM's case.[22] KM could not establish venue under Section 12 because Global Tech's contacts with the Southern District of Illinois were too minimal to satisfy the broadest test of venue under Section 12: that a defendant "transact[] business" in the venue.[23] Nor could KM independently establish venue under Section 1391, as this would require KM to first prove personal jurisdiction over Global Traffic through minimum-contacts analysis, rather than Section 12's nationwide service-of-process provision.[24]

But KM's antitrust claims concerned Global Traffic's alleged anti-competitive conduct outside Illinois — i.e., conduct having nothing to do with Global Traffic's ties to Illinois.[25] The Seventh Circuit's analysis thus entailed a clear message for antitrust plaintiffs like KM: "To avail oneself of the privilege of nationwide service of process, a plaintiff must satisfy the venue provisions of Section 12's first clause. If she wishes to establish venue exclusively through Section 1391, she must establish personal jurisdiction some other way."[26]

While the Seventh Circuit has embraced this integrated view of the Clayton Act's venue and service-of-process provisions, the willingness of undecided circuits to reach the same conclusion remains to be seen. By way of comparison, federal courts like the Ninth Circuit have rejected an integrated view of Section 12 because "allowing the allegedly injured party a greater range of potential places in which to bring suit is without question 'basically consistent with the purposes and language' of the Clayton Act."[27]

In any event, the circuit split on this issue is bound to influence where antitrust litigants decide to file suit, and how antitrust defendants may respond — especially in cases that involve a large number of putative defendants, as in a case that alleges (for example) a price-fixing conspiracy between a manufacturer in one state and dozens of its distributors nationwide. The desire of antitrust plaintiffs to place all these defendants before the same court — and head off jurisdiction and venue objections — may thus draw antitrust cases to jurisdictions that take a nonintegrated view of Section 12.

Antitrust litigants should be careful, however, in applying this reasoning to courts in the Third Circuit. Indeed, the Third Circuit appears to have taken a middle approach to the nationwide antitrust venue question, with the answer depending on whether the defendant is a domestic or alien corporation. Although the Third Circuit did adopt a nonintegrated view of Section 12 in the 2004 case of In re Automotive Refinishing Antitrust Litigation, the court did so with respect to a foreign corporation residing outside the United States.[28] In particular, the Third Circuit held that Section 12's venue requirements did not need to be satisfied for a German company to be subject to personal jurisdiction

through Section 12's nationwide service-of-process provision.[29]

In reaching this view, however, the Third Circuit took care to distinguish cases in other circuits that had arrived at an integrated reading of Section 12 "because the defendant corporations in those ... cases were not alien corporations and were, instead, out-of-state corporations. The distinction is crucial."[30] Consequently, at least two district courts in the Third Circuit have ruled that an integrated reading of Section 12 is required where purely domestic antitrust defendants are concerned.[31]

With civil antitrust litigation on the rise, it is reasonable to assume that the U.S. Supreme Court will eventually be called upon to decide how Section 12 of the Clayton Act should be read. And if the court's limitation of personal jurisdiction in the 2011 case of J. McIntyre v. Nicastro is any indication, the court may find it difficult to accept the idea that Section 12 permits nationwide venue in antitrust cases.[32] In Nicastro, a plurality of the court held that a state court could not exercise personal jurisdiction over a corporate defendant that placed its goods in the stream of commerce and "predicted that its goods will reach the forum State" — instead, for jurisdiction to exist, the defendant had to have "targeted the forum."[33]

Given the court's concern that an opposite view would enable a defendant to "be sued in Alaska or any number of other States' courts without ever leaving town," the Seventh Circuit's decision in KM Enterprises to read Section 12 in a limited, integrated manner assumes even greater prescience.[34] No doubt, the concept of nationwide antitrust venue is still alive and well in many parts of the county; but its days may be numbered.

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[1] 15 U.S.C. § 22 (2012).

[2] See Go-Video Inc. v. Akai Elec. Co., 885 F.2d 1406, 1413 (9th Cir. 1989).

[3] See In re Auto. Refin. Paint Antitrust Litig., 358 F.3d 288, 297 & n.10 (3d Cir. 2004).

[4] See KM Enters. Inc. v. Global Traffic Techs Inc., 725 F.3d 718, 730 (7th Cir. 2013).

[5] Id. at 725.

[6] See Daniel v. Am. Bd. of Emergency Med., 428 F.3d 408, 423-25 (2d Cir. 2005).

[7] See GTE New Media Servs. Inc. v. BellSouth Corp., 199 F.3d 1343, 1350-51 (D.C. Cir. 2000).

[8] KM Enters. Inc., 725 F.3d at 730.

[9] Administrative Office of the U.S. Courts, Table C-2A: U.S. District Courts—Civil Cases Commenced by Nature of Suit (2012), available online http://www.uscourts .gov/uscourts/Statistics/JudicialBusiness/2012/appendices/C02ASep12.pdf.

[10] See KM Enters. Inc., 725 F.3d at 722.

[11] See id.

[12] Id.

[13] Id. at 723.

[14] Id.

[15] See id. at 724.

[16] Carrier Corp. v. Outokumpu Oyj, 673 F.3d 430, 449 (6th Cir. 2012); see also KM Enters. Inc., 725 F.3d at 724 (citing Carrier Corp. for this proposition).

[17] See KM Enters. Inc., 725 F.3d at 724 (quoting 28 U.S.C. § 1391(b)(1) & (c)(2)).

[18] Id. at 725.

[19] Id. at 728, 730.

[20] Id. at 730.

[21] Id. at 729.

[22] See id. at 734.

[23] See id. at 731.

[24] See id. at 732.

[25] See id. at 732-33.

[26] Id. at 730. Go-Video Inc. v. Akai Elec. Co., 885 F.2d 1406, 1413 (9th Cir. 1989).

[27] Go-Video Inc. v. Akai Elec. Co., 885 F.2d 1406, 1413 (9th Cir. 1989) (citation omitted).

[28] See 358 F.3d 288, 296-97 & n.10 (3d Cir. 2004).

[29] See id. at 290-92, 296-97.

[30] Id. at 296 n.10.

[31] See Howard Hess Dental Labs Inc. v. Dentsply Int'l Inc., 516 F. Supp. 2d 324, 337-38 (D.N.J. 2007) ("[T]he Third Circuit has never applied a 'national contacts' test for establishing personal jurisdiction over a domestic antitrust defendant, the court declines to extend the holding of Automotive Refinishing in a manner that would counterindicate traditional long-arm jurisprudence with respect to such defendants."); Cumberland Truck Equip. Co. v. Detroit Diesel Corp., 401 F. Supp. 2d 415, 423-24 (E.D. Pa. 2005) ("The Court finds that ... supplementing Section 12 venue only for alien corporations, is most consistent with the law in this Circuit. The Third Circuit has emphasized the 'crucial' distinction between alien and domestic corporations, and by adopting this approach the Court recognizes and maintains this distinction.").

[32] 131 S. Ct. 2780 (2011).

[33] Id. at 2788.

[34] Id. at 2790.