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Federal Enclave Jurisdiction: Strategies for Removal to Federal Court When a Tort Occurred on Federal Land

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We have previously written about various strategies that defendants use to remove cases to federal court (see here, here, and here). Today we are writing about one that defendants should pursue in cases when the tort occurs on federally owned land: "federal enclave" jurisdiction. Though there is not much case law on the topic, at least three circuit courts and many district courts have held that district courts have original jurisdiction over these matters. And it may be the case that a defendant can make a federal enclave argument in conjunction with other arguments for removal or on its own.

The Basics of Federal Enclave Jurisdiction

The federal question statute gives a district court original jurisdiction over all actions arising under the Constitution, laws, or treaties of the United States. [1] And indeed, federal enclave jurisdiction arises from the Constitution, specifically Article I, Section 8, Clause 17.[2] The "enclave clause" gives Congress power to pass laws concerning land the federal government has purchased from the states:

> The Congress shall have power… to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.[3]

So why did the Framers need to explicitly give Congress this power? At a time when federalism was in question, the Constitution needed the enclave clause to make clear that Congress would retain legislative control over land that it purchased from a state to use for national military purposes. Then, because the enclave clause is a constitutional provision, the federal question statute activates the clause to give federal district courts jurisdiction over matters that arise on these federal enclaves.

But more importantly, what does the "enclave clause" mean for tort defendants today? When an injury occurs in a federal enclave, the defendant may remove a case filed in state court to federal

district court under 28 U.S.C. § 1441(a) because the district court would have had original jurisdiction. Significantly, the relevant state law still generally applies, much like it continues to apply when cases are removed to federal court on diversity grounds.

As always, defendants should also be sure to comply with the timing and notice requirements for removal under 28 U.S.C. § 1446.

When Defendants Should Identify Cases for Potential Federal Enclave Removal

Courts typically recognize federal enclave jurisdiction in cases against manufacturers of asbestos products[4] or other chemicals[5] when the plaintiff allegedly was exposed to those products on a military base. But courts also have applied the doctrine to factual scenarios such as a construction accident involving a subcontractor on a military base[6] and even a helicopter crash in a national park.[7]

The various U.S. Circuit Courts of Appeals do not frequently address federal enclave jurisdiction in the removal context because remand motions that are granted by a district court typically are not reviewable. But the Fifth[8], Ninth[9], and Tenth[10] Circuits have all found original jurisdiction in cases where an injury occurred on a federal enclave. No circuit has found against the existence of federal enclave jurisdiction.

In certain instances, courts also have expanded federal enclaves beyond the situation explicitly referenced in the Constitution. The constitutional provision notes that the federal property "must be purchased by consent of the legislature of the state." (emphasis added). Courts do not always stick to the plain language of the enclave clause — land purchased by the federal government from a state. For instance, the Tenth Circuit has noted that the federal government need not have purchased the land directly from a state, but "[t]he federal government may also create these enclaves by reserving jurisdiction when a state first enters the Union."[11] For example, in certain states that were not among the original thirteen, the federal government sometimes had military installations on land over which it retained ownership when those states first became states.

The concept also has been applied not just to states but to federal land purchased from territories such as Puerto Rico.[12]And in at least one instance, a court has merged these two concepts – holding that a federal enclave existed in land that the federal government retained when Puerto Rico first became a territory rather than a state.[13] In that case, the federal government received land in Puerto Rico directly from the Kingdom of Spain at the end of the Spanish-American War.

When Courts Have Declined to Exercise Federal Enclave Jurisdiction

Several district courts have declined to recognize federal enclaves in U.S. military installations in foreign countries, such as Vietnam, Afghanistan, and Iraq.[14] In one of those decisions, the Northern District of California noted that prior federal enclave case law typically involved land that had been sold to the federal government with explicit consent of a domestic state of the United States, though its remand determination ultimately turned on a separate issue.[15] In another decision, the District of Maine declined to hold that a federal enclave existed in a military base in Afghanistan, which the defendant contended would have extinguished plaintiff's state law claims.[16] The court noted that the express language of the enclave clause references "State land purchased by Congress with the consent of the State Legislature."[17]

And can a defendant argue for federal enclave jurisdiction when a tort occurs on non-military

government property? That remains an open question. Some courts have referenced federal enclaves on types of land not explicitly mentioned in the enclave clause, such as grazing land and national parks.[18]Other courts have been hesitant to extend federal enclave jurisdiction beyond military property, particularly when the cases involve such matters as routine automobile accidents in recreational areas where there is no strong federal interest.[19]

Given the relative dearth of circuit court decisions on federal enclave jurisdiction, the exact boundaries of federal enclaves remain an open question, and the analysis will be fact-specific. But the creative litigator always should consider it as a potential means to get a case to federal court with the heightened, federal pleading standards, robust expert discovery, efficiency through uniform procedural and evidentiary rules, and often more diverse jury pools.

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[1] 28 U.S.C. § 1331

[2] Akin v. Ashland Chemical Co., 156 F.3d 1030, 1034 (10th Cir. 1998).

[3] U.S. Const. art. I, § 8, cl. 17.

[4] Corley v. Long-Lewis Inc., 688 F. Supp. 2d 1315, 1324-29 and 1336 (N.D. Ala. 2010); Fung v. Abex Corp., 816 F. Supp. 569, 571 and 573 (N.D. Cal. 1992).

[5] Reed v. Fina Oil & Chemical Co., 995 F. Supp. 705, 713 (E.D. Tex. 1998); Akin v. Big Three Industries, Inc., 851 F. Supp. 819, 822 (E.D. Tex. 1994).

[6] Louisiana United Business Association Cas. Ins. Co. v. J&J Maintenance Inc., 133 F. Supp. 3d 852, 861 and 864-65 (W.D. La. 2015).

[7] Holliday v. Extex, 2005 WL 2158488, at *3-5 (D. Haw. Jul. 6, 2005).

[8] Mater v. Holley, 200 F.2d 123, 124-25 (5th Cir. 1952).

[9] Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1250 (9th Cir. 2006).

[10] Akin v. Ashland Chemical Co., 156 F.3d 1030, 1034 (10th Cir. 1998).

[11] Allison v. Boeing Laser Technical Services, 689 F.3d 1234, 1236 fn. 1 (10th Cir. 2012); Kelly v. Lockheed Martin Services Group, 25 F. Supp.2d 1, 3 (D.P.R. 1998).

[12] Torrens v. Lockheed Martin Services Group, 396 F.3d 468, 470 (1st Cir. 2005); Overseas Military Sales Corp. v. Suarez-Melendez, 2009 WL 793612, at *3 (D.P.R. Mar. 23, 2009).

[13] Koren v. Martin Marietta Services, Inc., 997 F. Supp. 196, 203-204 (D.P.R. 1998).

[14] Harris v. Kellogg, Brown & Root Services, Inc., 769 F. Supp. 2d 642, 655 fn. 7 (W.D. Pa. 2011); Gavrilovic v. Worldwide Language Resources, Inc., 441 F. Supp.2d 163, 176-77 (D. Me. 2006); Nguyen v. Allied Signal, 1998 WL 690854, at *1 (N.D. Cal. Sept. 29, 1998).

[15] Nguyen, 1998 WL 690854, at *1-2.

[16] Gavrilovic, 441 F. Supp.2d at 177.

[17] Id.

[18] Kleppe v. New Mexico, 426 U.S. 529, 542 n. 11 (1976) (“The Clause has been broadly construed, and the acquisition by consent or cession of exclusive or partial jurisdiction over properties for any legitimate purpose beyond those itemized is permissible.”) citing Collins v. Yosemite Park Co., 304 U.S. 518, 528-30 (1938) (applying federal enclave jurisdiction to Yosemite National Park which does not specifically fall into the military categories specifically defined by the Constitution); Holliday v. Extex, 2005 WL 2158488, at *3-5 (D. Haw. Jul. 6, 2005).

[19] Pratt v. Kelly, 585 F.2d 692, 696-97 (4th Cir. 1978); Sylvane v. Whelan, 506 F. Supp. 1355, 1358-60 (E.D.N.Y. 1981); Fowler v. Dodson, 159 F. Supp. 101, 103-04 (E.D. Pa. 1958).

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