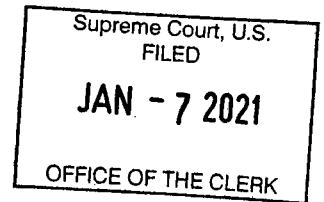


20-6853
No.

ORIGINAL

IN THE
Supreme Court of the United States



DORA L. ADKINS,
Petitioner,

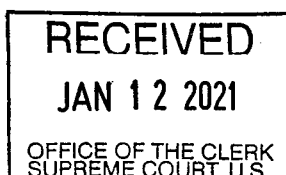
v.

DULLES HOTEL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Dora L. Adkins
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QUESTIONS PRESENTED

Whether, for purposes of determining principal place of business for diversity jurisdiction citizenship under 28 U.S.C. § 1332, a court can disregard the location of a corporation's headquarters - i.e., its nerve center.

- 1) Whether the District Court erred in its “Order,” Dated, September 16, 2020

because the Order Granted the Defendant, Dulles Hotel Corporation’s Motion to Dismiss for Lack of Jurisdiction with *Roseboro* (Dkt. No. 65) and DISMISSED Ms. Adkins’ action *with prejudice*. Pet. Appendix B, pg. 21.

- 2) Whether the District Court abused its discretion in its “Order,” Dated, September 25, 2020, when it DENIED the Motion for Reconsideration of the Order of September 16, 2020 (Dkt. No. 73). Pet. Appendix B, pg. 21.

- 3) Whether the United States Court of Appeals for the Fourth Circuit erred when it found no reversible error and affirmed as modified the District Court’s Orders of September 16, 2020 and September 25, 2020 (Dkt. No. 80; (Dkt. No. 81) and is attached as Pet. Appendix A, pg. 20.

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PARTIES TO THE PROCEEDING

Petitioner Dora L. Adkins was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent Dulles Hotel Corporation was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

TABLE OF AUTHORITIES

Cases:

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DORA L. ADKINS,

Petitioner,

v.

DULLES HOTEL CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner, Dora L. Adkins, respectfully asks that a writ of certiorari issue to review the judgment issued by the United States Court of Appeals for the Fourth Circuit that affirmed as modified by unpublished per curiam opinion and found no reversible error in the District Court's dismissal of Ms. Adkins' action or its denial of relief on reconsideration decided on December 29, 2020. Pet. Appendix A, pg. 20.

PER CURIAM BELOW

The Per Curiam Opinion of the United States Court of Appeals for the Fourth Circuit was affirmed and decided on December 29, 2020 and is attached as Pet. Appendix A, pg. 20. The United States Court of Appeals for the Fourth Circuit's Notice of Judgment, Dated, December 29, 2020; Judgment, Dated, December 29, 2020 is attached as Pet. Appendix A, pg. 20. No petition for rehearing was filed. The U. S. District Court for the Eastern District of Virginia Orders, Dated, September 16, 2020 and September 25, 2020 are attached as Pet. Appendix B, pg. 21.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The decision of the United States Court of Appeals for the Fourth Circuit for which petitioner seeks review was decided on December 29, 2020. The United States Court of Appeals for the Fourth Circuit found no reversible error in the District Court's dismissal of Ms. Adkins' action or its denial of relief on reconsideration is attached as Pet. Appendix A, pg. 20. This petition is filed within 90 days of the United States Court of Appeals for the Fourth Circuit's affirmed as modified decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Diversity Jurisdiction pursuant to 28 U.S.C. § 1332. Pet. Appendix C, pg. 22.

“Under 28 U.S.C. § 1332(a), the District Court “shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different States” 28 U.S.C. § 1332 “requires complete diversity among the parties, meaning the citizenship of each plaintiff must be difference from the citizenship of each defendant.” *Hoschar v. Applachian Power Co.*, 739 F.3d 163, 170 (4th Cir. 2014) (citing *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).) When one of the parties to the lawsuit is a corporation, 28 U.S.C. § 1332(c)(1) states that “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business”

STATEMENT OF CASE

A. Facts Giving Rise To This Case

Ms. Adkins filed her initial Complaint on March 13, 2020. (Dkt. No. 1). Approximately one (1) month later, on April 10, 2020, Ms. Adkins filed an Amended Complaint (Dkt. No. 7). The Amended Complaint alleges Ms. Adkins was “intentionally targeted for food poisoning by the Defendant, Dulles Hotel Corporation approximately nine-times with the incident on February 17, 2020 to cause death to Plaintiff.” Amended Complaint (Dkt. No. 7) at para. 4. The Amended Complaint purports to set forth claims of food contamination and/or food poisoning, intentional infliction of emotional distress and gross negligence under Virginia

common law. The Amended Complaint seeks compensatory and punitive damages in the amount of \$500 million combined. *Id.* at pgs. 2, 32-33.

B. The District Court Proceedings

On May 14, 2020 the Defendant, Dulles Hotel Corporation was served with Plaintiff's Amended Complaint. (Dkt. No. 16). Accordingly, pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(1), Defendant had until June 4, 2020 to file an answer." (Dkt. No. 45).

"On June 2, 2020, Defendant, Dulles Hotel Corporation filed its Motion to Dismiss for Lack of Jurisdiction with *Roseboro* which pled the U. S. District Court for the Eastern District of Virginia Alexandria Division did not hold jurisdiction over the case of *Dora L. Adkins v. Dulles Hotel Corporation*, Civil Action No.: 1:20-cv-361 because the Plaintiff, Dora L. Adkins and the Defendant, Dulles Hotel Corporation both reside in the same state of Virginia." (Dkt. No. 17, pg. 2). Plaintiff proved through her Brief in Opposition that the Defendant's Motion to Dismiss for Lack of Jurisdiction, with *Roseboro* was incorrect as such Proof was required through Facts and Affidavits that supported the Evidence in the case."

"However, the deadline of June 4, 2020 was amended in accordance with Rule 12(a)(4)(A) in that on June 2, 2020, Defendant filed a Motion to Dismiss for Lack of Jurisdiction (Motion to Dismiss") pursuant to Rule 12(b)(1). (Dkt. No. 17). Upon filing the Motion to Dismiss, Defendant had 14 days after this Court issued its

decision on that motion by which to file its Answer. The Motion to Dismiss for Lack of Jurisdiction was still pending.” (Dkt. No. 45).

“On June 24, 2020, a Scheduling Order: Initial Pretrial Conference set for July 22, 2020 at 11:00 AM in Alexandria Courtroom 301 before Magistrate Judge Ivan D. Davis. Final Pretrial Conference was set for November 19, 2020 at 10:00 AM in Alexandria Courtroom 601 before District Judge Rossie D. Alston Jr. Discovery due by November 13, 2020 was set. A pretrial Notice and Magistrate Judge Consent Form were mailed to the Plaintiff.” (Dkt. No. 25).

“Plaintiff filed an Opposition to the Defendant’s Motion to Dismiss on June 12, 2020. (Dkt. 20). Three days later, on June 15, 2020, Ms. Adkins filed the first of several Motions for Default. (Dkt. 21). This was followed by the following filings: Request for Entry of Default on June 30, 2020 (Dkt. 26); Motion for Default Judgment on July 17, 2020 (Dkt. No. 35); and Amended Motion for (4) Default Judgments on July 20, 2020 (Dkt. No. 38). All of Plaintiff’s Motions/Requests for Default were denied by the District Court on July 30, 2020.” (Dkt. No. 45).

“On July 14, 2020, Defendant, Dulles Hotel Corporation filed its Answer to the Amended Complaint and A Motion to Dismiss for Failure to State a Claim, with *Roseboro*.” (Dkt. No. 30, 31).

On September 16, 2020, the District Court issued an Order dismissing Plaintiff’s Amended Complaint for lack of jurisdiction. (Dkt. No.65). On September 21, 2020, Plaintiff filed a Motion for Leave from the Court for Certification pursuant

to 28 U.S.C. §1292 (b). (Dkt. No. 67). The District Court denied the Motion for Certification on September 23, 2020. (Dkt. No. 70). The following day, the Plaintiff filed her Motion for Reconsideration. (Dkt. No. 71). That Motion was denied by the District Court on September 25, 2020. (Dkt. No. 73).

The Appellate Court Proceedings

On October 6, 2020, Appellant submitted her Appeal of the Order, Dated, September 16, 2020 entered in the District Court to the United States Court of Appeals for the Fourth Circuit. [Dist. Ct. Dkt. No.104]; and on October 24, 2020, Appellant filed a Motion for Leave from the Court to Amend the Informal Brief to include the Order of September 25, 2020. The United States Court of Appeals for the Fourth Circuit on December 29, 2020, provided the following unpublished opinion in the case of Dora L. Adkins v. Dulles Hotel Corporation, Record No. 20-2047: “We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Adkins v. Dulles Hotel Corp., N. 1:20-cv-00361-RDA-IDD (E.D. Va. Sept. 16, 2020 & Sept. 25, 2020). However, because the dismissal was for lack of subject matter jurisdiction, we modify the judgment to reflect that the dismissal is *without prejudice*.” On December 29, 2020, Notice of Judgment was filed by the United States Court of Appeals for the Fourth Circuit is attached as Pet. Appendix A, pg. 20.

The instant Petition ensued. For the reasons discussed below, the Petition in all respects should be granted.

REASONS FOR GRANTING THE PETITION

I. EVIDENCE SHOWS AND PROVES THE DISTRICT COURT ERRED AND ABUSED ITS DISCRETION

ISSUES APPEALED AND/OR ERRORS:

A. THE DISTRICT COURT ERRED IN ITS ORDER, DATED, SEPTEMBER 16, 2020, BECAUSE THE ORDER GRANTED DULLES HOTEL CORPORATION, ITS MOTION TO DISMISS FOR LACK OF JURISDICTION AND DISMISSED THE MATTER WITH PERJUDICE

The District Court erred in its Order, Dated, September 16, 2020 because the Order granted Dulles Hotel Corporation its Motion to Dismiss for Lack of Jurisdiction and dismissed the matter *with prejudice*. Pet. Appendix B, pg. 21. Based on Plaintiff's Facts, Proof, and Evidence, the District Court erred in its Order of September 16, 2020, when it GRANTED the Defendant, Dulles Hotel Corporation's Motion to Dismiss for Lack of Jurisdiction with *Roseboro* and dismissed the matter *with prejudice*. (Dkt. No. 65), Pet. Appendix B, pg. 21. Plaintiff's Facts, Proof, and Evidence are substantial that an error was made by the District Court as clarified in Hertz Corp. v. Friend, 559 U.S. 77 (2010) when the U.S. Supreme Court decided unanimous to vacate and remand. Plaintiff through substantial Facts, Proof, and Evidence; as well as, through and by the case of Hertz Corp. v. Friend, 559 U.S. 77 (2010) have proven 100% that the Defendant Dulles Hotel Corporation's principal office is located at 433 California St. 7th FL, San Francisco, CA, 94104 - 2011, USA. (Dkt. Nos 7; 20). "The burden of persuasion for establishing diversity jurisdiction, of course, remains on the party asserting it."

Kokkonen v. Guardian Life Ins. Co. of America, 511 U. S. 375, 377 (1994); McNutt v. General Motors Acceptance Corp., 298 U. S. 178, 189 (1936).

The Appellee stated the following: “The Appellant argues that the Appellee’s “nerve center” is San Francisco, California based solely upon the addresses for the Defendant’s principal office and the Defendant’s directors listed in the State Corporation Commission’s Business Entity Details for Dulles Hotel Corporation. (Appellant’s Informal Brief, p. 6-9). The Plaintiff further argues that the General Manager is not the officer who directs, controls or coordinates the Defendant’s activities because the General Manager is not listed in the State Corporation Commission’s Business Entity Details for Dulles Hotel Corporation. *Id.*, p. 7.” (Appellee’s Response Brief, p. 6).

The Appellant stated the following: It is completely and totally false that “Appellant’s argument is **based solely** upon the addresses for the Defendant’s principal office and the Defendant’s directors listed in the State Corporation Commission’s Business Entity Details for Dulles Hotel Corporation.” Appellant’s argument is also based upon the opinion of the “Supreme Court in Hertz Corp. v. Friend, 559 U.S. 77 (2010), **that** clarified that “the “nerve center” approach, while imperfect, is superior to the “business activities” approach used in the Ninth Circuit and elsewhere.” (Appellant’s Reply in Roman No. II, p. 5-7 in this document and Appellant’s Informal Brief under Supporting Facts and Argument No. 2, p. 6; Appellant’s Motion for Leave from the Court to Amend Informal Reply Brief in

Roman No. II, p. 4-8; Appellant's Motion for Leave from Court to Amend the Informal Brief, under Supporting Facts and Argument No. 2, p. 6)).

B. THE DISTRICT COURT ABUSED ITS DISCRETION IN ITS ORDER, DATED, SEPTEMBER 25, 2020, BECAUSE THE ORDER DENIED MS. ADKINS' MOTION FOR RECONSIDERATION OF THE ORDER DATED, SEPTEMBER 16, 2020 (Dkt. 73).

The District Court abused its Discretion in its Order, Dated, September 25, 2020 because the Order denied Ms. Adkins' Motion for Reconsideration of the Order, Dated, September 16, 2020. Pet. Appendix B, pg. 21.

The Appellee argued the following: "However, under the "nerve center" test, Dulles Hotel Corporation's principal place of business is Herndon, Virginia. Dulles Hotel Corporation's only business is the operation of the Hilton Washington Dulles Airport in Herndon, Virginia. (Dkt. No. 17, Exhibit C, para. 7). The activities of Dulles Hotel Corporation are directed, controlled, and coordinated by the General Manager of the Hilton Washington Dulles Airport, who is located at the hotel in Herndon, Virginia. *Id.*, para. 8. The duties of the General Manager for Hilton Washington Dulles Airport include the following: "[l]eads the Executive and Management team effectively"; "[p]lans, develops and implements hotel policies and goals"; "[c]oordinates activities of departments such a rooms, food, beverage, engineering, sales, and administrative to create operational efficiency and economy"; 7 and, "[d]irects and coordinates promotion of products and services to develop new markets, increase share of market, and obtain a competitive position in

the industry.” (Dkt. No. 20, Exhibit 3). This description of the General Manager’s duties demonstrates that the General Manager of the Hilton Washington Dulles Airport directs, controls, and coordinates the hotel’s activities. As such, principal place of business of the Dulles Hotel Corporation is the location of the General Manager of the Hilton Washington Dulles Airport, which is Herndon, Virginia.” (Doc. 17 - Exhibit C.) (Appellee’s Response Brief, p. 6-7).

C. THE UNITED STATES COURT OF APPEALS FOR FOURTH
CIRCUIT ERRED WHEN IT FOUND NO REVERSIBLE ERROR AND
AFFIRMED THE DISTRICT’S COURT ORDERS OF SEPTEMBER
16, 2020 AND SEPTEMBER 25, 2020

The United States Court of Appeals for the Fourth Circuit erred when it found no reversible error and affirmed as modified the District’s Court Orders of September 16, 2020 and September 25, 2020. “However, because the dismissal was for a lack of subject matter jurisdiction, we modify the judgment to reflect that the dismissal is *without prejudice*. See S. Walk at Broadlands Homeowner’s Ass’n v. OpenBand at Broadlands, LLC, 713 F.3D 175, 185 (4th Cir. 2013) (‘dismissal for ... [a] defect in subject matter jurisdiction... must be one *without prejudice*, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.’).” Pet. Appendix A, pg. 20.

Appellant argued the following: “In Appellant’s Informal Brief, Dated, October 6, 2020, and Appellant’s Motion for Leave from the Court to Amend the Informal Brief, Dated, October 24, 2020, the Appellant quoted directly from

Supreme Court opinion in Hertz Corp. v. Friend, 559 U.S. 77 (2010), when the Supreme Court made its ruling through use of its argument for the “Primary Holding” and the quoted paragraph in number 2, page 6 under Supporting Facts and Argument.” (Appellant’s Informal Brief, page 5; and number 2 on page 6 under Supporting Facts and Argument). The “business activities” of the General Manager are clarified in Hertz Corp. v. Friend, 559 U.S. 77 (2010), when it states the following:

“The Supreme Court ruled that the "nerve center" approach, while imperfect, is superior to the "business activities" approach used in the Ninth Circuit and elsewhere. The court agreed with the Seventh Circuit stating that the “principle place of business” is best read as referring to the place where the corporation's officers direct, control, and coordinate the corporation's activities.” The court recognized that this place has been referred to by the Court of Appeals as the "nerve center" and should generally be where a corporation maintains its headquarters.”

The analysis of the above paragraph taken from Hertz Corp. v. Friend, 559 U.S. 77 (2010), as it relates to the case of Dora L. Adkins v. Dulles Hotel Corporation, Civil Action No.: 1:20-cv-361 is the differentiation between David Schaum, former General Manager (GM) for the Hilton Washington Dulles Airport now replaced by Claudia Eggspuhler, General Manager (GM) for the Hilton Washington Dulles Airport’s “business activities” carried out on a daily basis to include “[l]eads the Executive and Management team effectively”; “[p]lans, develops and implements hotel policies and goals”; “[c]oordinates activities of departments such a rooms, food, beverage, engineering, sales, and administrative to create

operational efficiency and economy”; 7 and, “[d]irects and coordinates promotion of products and services to develop new markets, increase share of market, and obtain a competitive position in the industry.” for the Hilton Washington Dulles Airport located at 13869 Park Center Rd., Herndon, Virginia (Appellee’s Response Brief, pages 6-7); **AND** the corporation's officers who includes the “President, Lawrence Yuinam Lui at address 433 California St. 7th FL, San Francisco, CA, 94104 - 2011, USA; its Secretary Joyce Marie Weible at address 433 California St. 7th FL, San Francisco, CA, 94104 - 2011, USA; its Treasurer, Julius L Helvey III at address 433 California St 7th FL, San Francisco, CA, 94104 - 2011, USA; and Gorretti Lui, at address 433 California St. 7th FL, San Francisco, CA, 94104 - 2011, USA; as the principle Office Address of 433 California St. 7th FL, San Francisco, CA, 94104 - 2011, USA; whereby, all officers for Dulles Hotel Corporation reside. (Dkt. Nos. 20; 71; Appellant’s Informal Brief, p. 7; and Appellant’s Motion for Leave from the Court to Amend the Informal Brief, Dated, October 24, 2020, p. 7-8)),” who direct, control, and coordinate the corporation's activities.

“The Supreme Court in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), **clarified** that “the "nerve center" approach, while imperfect, is superior to the "business activities" approach used in the Ninth Circuit and elsewhere. The court agreed with the Seventh Circuit stating that the "'principle place of business' is best read as referring to the place where the corporation's officers direct, control, and coordinate the corporation's activities." The court recognized that this place has been referred to by the Court of Appeals as the "nerve center" and should generally be where a corporation maintains its headquarters.” (Appellant’s Informal Brief, Issue No. 1, Supporting Facts and Argument No. 2, p. 6; Appellant’s Motion for Leave from Court to

Amend the Informal Brief Issue No. 1, Supporting Facts and Argument No. 2, p. 6)).

Without David Schaum, former General Manager (GM) for the Hilton Washington Dulles Airport now replaced by Claudia Eggspuhler, General Manager (GM) for the Hilton Washington Dulles Airport located at 13869 Park Center Rd., Herndon, Virginia carrying out its “business activities” of the Hilton Washington Dulles Airport Hotel; there could not be a business to provide to the public for accommodations, to list two; for hotels guest rooms; and food and beverage.

II. THERE WAS NO VALID OPPOSITION FROM DULLES HOTEL CORPORATION

Quoted directly from the Appellee’s Informal Reply Brief: “For the foregoing reasons, Appellant has failed to present any basis for reversing the District Court’s Orders of January 10 and 23, 2018. Consequently, Appellee, Dulles Hotel Corporation, respectfully requests that the Court AFFIRM the judgment of the District Court.” (Appellee’s Response Brief, p. 7). Under the Appellee’s heading of “Conclusion,” of its Informal Response Brief, it is correct, that the Appellant did not present any basis for reversing the District Court’s Orders of January 10 and 23, 2018. But it is fact that Appellant sufficiently pled facts for the basis for reversing the District Court Order of September 16, 2020 in the Informal Brief, Dated, October 6, 2020 and in an Amended Informal Brief, Dated, October 24, 2020; specifically, the Defendant’s Motion to Dismiss for Lack of Jurisdiction with

Roseboro and the Order of September 25, 2020 that abused its discretion when it denied the Motion for Reconsideration of the Order of September 16, 2020. (Appellant's Informal Brief, Dated, October 6, 2020; and Appellants Motion for Leave from Court to Amend the Informal Brief, Dated October 24, 2020; Issues Number 1, 2, 3, & 4 and/or p. 4-12)). The 4th Circuit Court of Appeals cannot AFFIRM the judgment of the District Court Orders of January 10 and 23, 2018 for the two orders are unrelated to the case of *Dora L. Adkins v. Dulles Hotel Corporation*, Civil Action No.: 1:20-cv-361.

III. CIRCUITS ARE DIVIDED

“Not surprisingly, different circuits (and sometimes different courts within a single circuit) have applied these highly general multifactor tests in different ways. *Id.*, §§102.54[3]–[7], [11]–[13] (noting that the First Circuit “has never explained a basis for choosing between ‘the center of corporate activity’ test and the ‘locus of operations’ test”; the Second Circuit uses a “two-part test” similar to that of the Fifth, Ninth, and Eleventh Circuits involving an initial determination as to whether “a corporation’s activities are centralized or decentralized” followed by an application of either the “place of operations” or “nerve center” test; the Third Circuit applies the “center of corporate activities” test searching for the “headquarters of a corporation’s day-to-day activity”; the Fourth Circuit has “endorsed neither [the ‘nerve center’ or ‘place of operations’] test to the exclusion of

the other”; the Tenth Circuit directs consideration of the “total activity of the company considered as a whole”). *See*, also 13F Wright & Miller §3625 (describing, in 73 pages, the “nerve center,” “corporate activities,” and “total activity” tests as part of an effort to locate the corporation’s “center of gravity,” while specifying different ways in which different circuits apply these or other factors).”

“In light of differences among the Circuits in the application of the test for corporate citizenship, we granted the writ. Compare Tosco Corp., *supra*, at 500–502, and Capitol Indemnity Corp. v. Russellville Steel Co., 367 F. 3d 831, 836 (CA8 2004) (applying “total activity” test and looking at “all corporate activities”), with Wisconsin Knife Works, *supra*, at 1282 (applying “nerve center” test).”

“The number of factors grew as courts explicitly combined aspects of the “nerve center” and “business activity” tests to look to a corporation’s “total activities,” sometimes to try to determine what treatises have described as the corporation’s “center of gravity.” *See, e.g., Gafford v. General Elec. Co.*, 997 F. 2d 150, 162–163 (CA6 1993); Amoco Rocmount Co. v. Anschutz Corp., 7 F. 3d 909, 915 (CA10 1993); 13F Wright & Miller §3625, at 100. A major treatise confirms this growing complexity, listing Circuit by Circuit, cases that highlight different factors or emphasize similar factors differently, and reporting that the “federal courts of appeals have employed various tests”—tests which “tend to overlap” and which are sometimes described in “language” that “is imprecise.” 15 Moore’s §102.54[2], at 102–112. *See*, also *id.*, §§102.54[2], [13], at 102–112 to 102–122 (describing, in 14

pages, major tests as looking to the “nerve center,” “locus of operations,” or “center of corporate activities”).

“In an effort to find a single, more uniform interpretation of the statutory phrase, we have reviewed the Courts of Appeals’ divergent and increasingly complex interpretations. Having done so, we now return to, and expand, Judge Weinfeld’s approach, as applied in the Seventh Circuit. *See, e.g., Scot Typewriter Co.*, 170 F. Supp., at 865; *Wisconsin Knife Works*, 781 F. 2d, at 1282. We conclude 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. It is the place that Courts of Appeals have called the corporation’s “nerve center.” And in practice it should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the “nerve center,” and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).”

“Three sets of considerations, taken together, convince the Court that the “nerve center” approach, while imperfect, is superior to other possibilities. First, §1332(c)(1)’s language supports the approach. The statute’s word “place” is singular, not plural. Its word “principal” requires that the main, prominent, or most important place be chosen. *Cf., e.g., Commissioner v. Soliman*, 506 U. S. 168, 174. And the fact that the word “place” follows the words “State where” means that the

“place” is a place *within* a State, not the State itself. A corporation’s “nerve center,” usually its main headquarters, is a single place. The public often considers it the corporation’s main place of business. And it is a place within a State. By contrast, the application of a more general business activities test has led some courts, as in the present case, to look, not at a particular place within a State, but incorrectly at the State itself, measuring the total amount of business activities that the corporation conducts there and determining whether they are significantly larger than in the next-ranking State. Second, administrative simplicity is a major virtue in a jurisdictional statute. *Sisson v. Ruby*, 497 U. S. 358, 375. A “nerve center” approach, which ordinarily equates that “center” with a corporation’s headquarters, is simple to apply *comparatively speaking*. By contrast, a corporation’s general business activities more often lack a single principal place where they take place. Third, the statute’s legislative history suggests that the words “principal place of business” should be interpreted to be no more complex than an earlier, numerical test that was criticized as too complex and impractical to apply. A “nerve center” test offers such a possibility. A general business activities test does not.” Pp. 14–17.

IV. STANDARD OF APPELLATE REVIEW

The United States Supreme Court reviews *de novo* the United States Court of

Appeals for the Fourth Circuit's opinion that found no reversible error in the District Court's dismissal of Ms. Adkins' action or its denial of relief on reconsideration that it lacked subject-matter jurisdiction for lack of diversity.

Pillow v. Bechtel Const., Inc., 201 F.3d 1348, 1351 (11th Cir. 2000). The Motion for Reconsideration is reviewed for abuse of discretion. Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 246 (3d Cir. 2010) (citation omitted).” See, Am. Canoe Ass’n. v. Murphy Farms, Inc., 326 F.3d 505, 515–16 (4th Cir. 2003).”

V. REVIEW IS WARRANTED FOR THE REASONS ARTICULATED IN I, II, AND III OF THIS PETITION

Ms. Adkins has cited compelling reasons warranting this Court's review asserting a clarifying federal question: “The question is whether the phrase “principal place of business” in the federal diversity jurisdiction statute refers to the place which serves as headquarters or the center of operations planning.”

CONCLUSION

For the foregoing reasons, the court should grant Dora L. Adkins' Petition For A Writ Of Certiorari To Review The Judgment Of The United States Court of Appeals For The Fourth Circuit and that of the District Court.

Dated: January 7, 2021

Respectfully submitted,

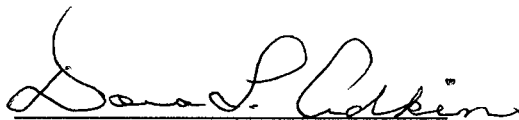


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all parties required to be served have been served with a true and complete copy of Petitioner's Petition for a Writ of Certiorari by United States Postal Service first-class mail, postage prepaid, and by email this 7th day of January 2021 to:

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