

## Implications of Remote Working on Proper Venue: Covid-19 does not change the rules, but can cause improper venue

**GreatGigz Sol., LLC v. ZipRecruiter, Inc., 21-CV-00172 (W.D. Tex. Feb. 11, 2022)**

By: Jason J. Keener & Alexa Tipton, February 25, 2022

On February 11, 2022, the Western District of Texas considered the venue implications of Covid-19 remote work policies. The Court held that while Covid-19 did not change venue law, a company's temporary lack of a physical office during Covid-19 caused the Court to have improper venue. The Court accordingly granted the motion to dismiss.

GreatGigz filed a patent infringement complaint in the Western District of Texas against ZipRecruiter, a Delaware corporation, alleging venue based on ZipRecruiter maintaining a regular and established place of business in the District. In patent cases, unless the action is filed in the defendant's state of incorporation, venue is proper if the defendant has a "regular and established place of business" by: (1) having a physical place in the district; (2) it is a regular and established place of business; and (3) it is the place of the defendant." *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017).

While ZipRecruiter had leased office space in the District, that lease lapsed during the pandemic when employees were working remotely. GreatGigz argued the prior lease suggests a need for employees physically located in the District and that remote employees' homes in the District serve as the physical location of ZipRecruiter. However, the Court found that GreatGigz did not prove that ZipRecruiter has a "regular and established" place of business in the District under the *Cray* test. Even though an employee's home could be used to satisfy the first prong of *Cray*, the Court found the other prongs lacking. The Court analyzed venue under the "traditional approach" which looks at venue at the time of filing, rejecting the "reasonable and fair standard" which evaluates venue at the time the action accrued and whether the suit is filed within a reasonable time thereafter.

The Court analyzed whether employees' homes were an established place of business by looking at (1) the permanence of the location; (2) whether the activity there is sporadic; (3) whether the employee can move out of the District without the approval of ZipRecruiter; (4) whether ZipRecruiter owns or leases the home; (5) whether the home was used to store, distribute, or sell goods; and (6) any marketing that identifies the homes as a place for business. The Court found each of these factors weighed against finding the homes to be the established location of ZipRecruiter. Therefore, although the pandemic changed the way America works, the Court held that it did not change established civil procedure and granted ZipRecruiter's motion to dismiss for lack of proper venue.

While not analyzed by the Court, should ZipRecruiter sign a new office lease as its employees in the District begin to return to work, a similar Complaint refiled by GreatGigz at that time may establish proper venue. Thus, while the law on proper venue may not have changed due to Covid-19, remote working policies due to Covid-19 may provide certain companies with temporary periods of time where it should no longer be assumed that venue is proper where it has historically existed for the company.