The Federal Enclave Doctrine – Fun for Defendants

by Alexander van Broek

Attorneys for plaintiffs need to be aware of the defensive use of the federal enclave doctrine ["**FED**."] If material facts of your case occurred on a federal enclave, be sure to file all possible federal law claims because your state law claims may be dismissed (preempted) under the FED. Also, your case may be removed to federal court if the FED issue arises.

PI attorneys probably won't face loss of their claims under the FED because battery, defamation, and negligence, for example, are state law claims that existed before most federal enclaves were created. In addition, the FED has been modified to permit PI claims. See, below.

Which attorneys should really worry? Those who use recent state statutes and common law, like me. The Fair Employment and Housing Act, many state labor laws, wrongful termination in violation of public policy, intentional interference with prospective economic advantage, negligent infliction of emotional distress, are state law claims that came into being after many federal enclaves were created.

What is a Federal Enclave?

Article 1, section 8, clause 17 gives Congress the power to obtain from the States "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" and exercise authority over them. Although Congress agreed in 1841 that it had to get consent to erect federal buildings from the state involved, in 1885 the Supreme Court ruled that there were two additional ways for the United States to acquire federal enclaves: (1) cession by a state, and (2) the United States could "reserve" legislative jurisdiction at the time of statehood, and expanded these "cessions" and "reservations" beyond the needful building purpose of the Enclave Clause. *Fort Leavenworth Railroad Company v.* Lowe (1885) 114 U.S. 525.

How does the FED affect clients and their attorneys?

Plaintiffs got some help in 1928, when Congress made state wrongful death and personal injury claims applicable to federal enclaves. *16 U.S.C. § 457*. In 1937, the Supreme Court held that the states could reserve jurisdiction when consenting to federal legislative jurisdiction. *James v. Dravo Contracting Co.* (1937) 302 U.S. 134. But, many court cases now hold that state laws do not apply on federal enclaves, including criminal laws, human rights laws, *Hooda v. Brookhaven Nat. Laboratory* (E.D.N.Y. 2009) 659 F.Supp.2d 382, anti-discrimination laws, *Osburn v. Morrison Knudsen Corp.* E.D. Mo. 1997) 962 F. Supp. 1206; *Miller v. Wackenhut Services*. (W.D. Mo. 1992) 808 F.Supp. 697, and whistleblower laws, *Stiefel v. Bechtel Corp*. (S.D. Cal. 2007) 497 F.Supp.2d 1138.

Are There Exceptions to the FED?

If the state law claim existed before the creation of the federal enclave, the state law claim may be allowed. The FED will not apply if a state reserved jurisdiction when ceding the land to the United States, or if federal legislation reversed the effect of FED.

In *Kasperzyk v. Shetler Sec. Servs., Inc*. (N.D. Cal. Jan. 3, 2014) 2014 U.S. Dist. LEXIS 547 ("*Kasperzyk*") Judge Chen found that the state torts occurred on a federal enclave created in 1874, but he limited the effect of the FED as follows: he ruled that because 16 U.S.C. § 457 permits claims for death or personal injury within federal enclave, he would allow the state claims to go forward but only as to personal injury damages, and he disallowed economic damages. (*Scott v. Gino Morena Enter. L.L.C*. (U.S.D.C. C.D. 2015) 2015 WL 847160, *3 disagrees with *Kasperzyk* on procedural grounds.)

Find out when the federal enclave was created.

You need to know the date the federal enclave in question was formed. The existence of a federal enclave may be noticeable: lands and buildings operated by the United States, military installations, federal courthouses, and national parks. The courts will take a judicial notice of a deed for this purpose. It will be prudent for you to locate the deed for any location where material facts in your case took place. A court might also take judicial notice of a finding in another court case, as in *Kasperzyk* which took judicial notice that the Presidio was a federal enclave based on a California statute ceding the territory to the United States in 1897. (Id. at *12.) Other sources for this information include statutes, cases, an historical society, and legislative or executive actions. There is book entitled *Highlights from Federal Enclave Law* by Roger W. Haines, Jr. I consulted with Mr. Haines, who may be located on the Internet.

Find out the date of origin of each cause of action.

Find out when each vulnerable cause of action originated or was first noted by the courts of your jurisdiction. You want to be able to say that your cause of action was in existence in your state when the federal enclave was ceded by your state or created within your state. A neat summary of the history of FED is found in *Stiefel v. Bechtel Corporation* (S.D. Cal. 2007) 497 F.Supp.2nd 1138, 1148.

> This constitutional provision permits the continuance of those state laws existing at time of surrender of sovereignty, except insofar as they are inconsistent with the laws of the United States or with the governmental use for which the property was acquired, unless they are abrogated by Congress, so that no area may be left without a developed legal system for private rights. [citations omitted.] Because the federal government has exclusive jurisdiction, such laws become federal laws, although having their origin in the laws of the state. [citations omitted.] Only state laws in effect at the time of cession or transfer of jurisdiction, however, can continue in operation. [citation omitted.] Laws subsequently enacted by the state are inapplicable in the federal enclave unless they come within a reservation of jurisdiction or are adopted by Congress. [citations omitted.]

In *Stiefel*, the plaintiff successfully argued that FED did not apply to his retaliation claims under Labor Code sections 6310 and 6311 (pertaining to worker safety) because those laws "derive from very similar statutes . . . that were adopted in in 1937."

How do you know if you state law claim is preempted by the FED?

In California, battery and assault have been known as civil wrongs since *In Ex Parte Prader* (1856) 6 Cal. 239, where the California Supreme Court held that a party cannot be imprisoned under a judgment, in a civil action, for assault and battery. See, also, *Valdez v. Percy* (1939) 35 Cal.App.2d 485. If the federal enclave was created after the state cause of action originated, it is likely that you can successfully argue that it is not preempted by the FED.

The Fair Employment and Housing Act was passed in 1980 but is based prior law passed in 1948. Intentional infliction of emotional distress was first recognized in California in 1950. *Bowden v. Spiegel, Inc.* (1950) 96 Cal.App.2d 793; *Richardson v. Pridmore* (1950) 97 Cal.App.2d 124. Negligent infliction of emotional distress was first recognized in California in 1980. *Molien v. Kaiser Found. Hosps*. (1980) 27 Cal.3d 916.

Unjustifiable interference with business relations may have first appeared in California in *Masoni v. Board of Trade of San Francisco* (1953) 119 Cal.App.2nd 738. The unfair competition law (Bus. & Prof. Cod. §§ 17200, et seq.) was enacted in 1977. Claims under Lab. Cod. §§ 201-204 are barred by FED but unjust enrichment and promissory estoppel are not. *Mersnick v. USProtect Corp*. (N.D. Cal. 2006) 2006 WL 3734396.

The earliest California version of a minimum wage law was passed in 1913. In *Korndobler v. DNC Parks & Resorts at Sequoia* (2015) 2015 WL 37976252015 Wage & Hour Cas.2d (BNA) 194, 912, the court dismissed all the state law wage and hour claims except the minimum wage claim. The court noted that Sequoia National Park became a federal enclave in 1920. The court held that because California did not reserve its labor law rights at the time of cession, the plaintiff's overtime and penalty claims were barred. See a similar result in *George v. UXB Intenational, Inc*. (N.D. Cal. 1996) 1996 WL 241624.

In *Booher v. JetBlue Airways Corporation* (2016) 2016 WL 164292926, Wage & Hour Cas.2d (BNA), Judge Jeffrey S. White accepted defendant's argument in opposition to plaintiff's motion for summary judgment on plaintiffs' claim for overtime wages that (this was creative work by defense counsel) some of the time that flight attendants were in the air occurred in the airspace over federal enclaves such as the Yosemite National Park. Though he denied plaintiff's S/J motion, the court noted that at trial the amount time to be discounted might be insignificant.

Other Exceptions To the Federal Enclave Doctrine:

At the time of the cession of the land to the federal enclave the state may have expressly reserved its authority to enforce its laws, See, *Sundaram v. Brookhaven National Laboratories* (E.D. N.Y 2006) 424 F.Supp.2d 545. Congress may have passed a statute providing that state laws are not preempted at a particular federal enclave. See, *Goodyear Atomic Corporation* (1988) 486 U.S. 174. In *Lebron Diaz v. General Security Services Corp*. (D.P.R. 2000) 93 F.Supp.2nd 129, individuals employed by the defendant at a federal courthouse brought a lawsuit for unpaid bonuses and sick leave under Puerto Rico law. The employer moved to dismiss on the grounds of FED. The court accepted plaintiff's argument that the Service Contract Act

explicitly applied local laws to the federal enclave. (Other courts have reached the opposite conclusion.)

What do you do if your claim is preempted?

Don't file that claim, because you might be removed to federal court unnecessarily. If your state law claim is preempted, try to find a federal law claim that provides the same or similar remedies.

The FED Authorizes Removal to Federal Court.

A defendant may employ the FED to remove a case to federal court under 28 U.S.C. section 1446. The defendant must sufficiently allege the "now-federal nature" of the plaintiff's cause of action. For example, in *JAAAT Technical Services, LLC v. Tetra Tech Tesoro, Inc.* (E.D. Va. 2016) 2016 WL 1271039, the court found exclusive federal jurisdiction. A defendant might also remove a case on the basis of FED after discovery gives rise to sufficient information to support removal, on the ground that the initial pleading was ambiguous and therefore did not provide unequivocal notice of the right to remove. *Akin v. Ashland Chemical Co*. (10th Cir. 1998) 156 F.3d 1030, 1035. In the face of a removal, it worthwhile for a plaintiff to identify grounds to dispute FED allegations, because a federal court is entitled to rely upon removing party's factual allegations which are undisputed by the plaintiff. *Montez v. Department of the Navy* (5th Cir. 2004) 392 F.3d 147.

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