

## Seventh Circuit Review

---

Volume 9 | Issue 1

Article 2

---

9-1-2013

# A Sight for Sore Eyes: The Seventh Circuit Correctly Interprets Section 12 of the Clayton Act

Ryan Moore

*IIT Chicago-Kent College of Law*

Follow this and additional works at: <http://scholarship.kentlaw.iit.edu/seventhcircuitreview>

 Part of the [Law Commons](#)

---

### Recommended Citation

Ryan Moore, *A Sight for Sore Eyes: The Seventh Circuit Correctly Interprets Section 12 of the Clayton Act*, 9 *Seventh Circuit Rev.* 1 (2013).  
Available at: <http://scholarship.kentlaw.iit.edu/seventhcircuitreview/vol9/iss1/2>

This Antitrust is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in *Seventh Circuit Review* by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [dgersberg@kentlaw.iit.edu](mailto:dgersberg@kentlaw.iit.edu).

## **A SIGHT FOR SORE EYES: THE SEVENTH CIRCUIT CORRECTLY INTERPRETS SECTION 12 OF THE CLAYTON ACT**

RYAN MOORE

Cite as: Ryan Moore, *A Sight for Sore Eyes: The Seventh Circuit Correctly Interprets Section 12 of the Clayton Act*, 9 SEVENTH CIRCUIT REV. 1 (2013), at <http://www.kentlaw.iit.edu/Documents/Academic Programs/7CR/v9-1/moore.pdf>.

### INTRODUCTION

Albert Einstein wrote, “Most of the fundamental ideas of science are essentially simple, and may, as a rule, be expressed in a language comprehensible to everyone.”<sup>1</sup> If that is true of scientific ideas, surely it is true of legal ideas.<sup>2</sup> Sadly this has not proved true. Legal writing—especially legislative drafting<sup>3</sup>—is marred by obscurity. Reliance on loose verbs and excess words<sup>4</sup> has made simple ideas difficult to understand and complex ideas nearly impossible to understand.<sup>5</sup> This obscurity is especially flagrant because the purpose

---

<sup>1</sup> BRYAN A. GARNER, MODERN AMERICAN USAGE 630-631 (3d ed. 2009) (quoting ALBERT EINSTEIN, THE EVOLUTION OF PHYSICS 29 (1938)).

<sup>2</sup> GARNER, *supra* note 1, at 631.

<sup>3</sup> BRYAN A. GARNER, GARNER ON LANGUAGE AND WRITING 171 (1st ed. 2009) (citing MICHAEL ZANDER, THE LAW-MAKING PROCESS 22 (2d ed. 1985)).

<sup>4</sup> GARNER, *supra* note 3, at 174 (“Few reforms would improve legal drafting more than if drafters were to begin paying closer attention to the verbs by which they set forth duties, rights, prohibitions, and entitlements.”).

<sup>5</sup> GARNER, *supra* note 1, at 582.

of legislative drafting is to say “in the plainest language, with the simplest, fewest, and fittest words, precisely what” the law means.<sup>6</sup>

Yet obscurity is a hallmark of Congress. In 1948, the average length of bills that made it through Congress was two and a half pages; today it is twenty.<sup>7</sup> This is not new: in 1857, Lord Campbell criticized a poorly drafted statute as “an ill-penned enactment . . . putting Judges in the embarrassing situation of being bound to make sense out of nonsense, and to reconcile what is irreconcilable.”<sup>8</sup> Nor is this necessary<sup>9</sup>: “With some hard work,” drafters can transform “all-but-inscrutable” texts into straightforward statutes.<sup>10</sup>

The Clayton Antitrust Act<sup>11</sup> is one such “all-but-inscrutable” statute. It prohibits certain conduct that Congress deems anticompetitive: Section 2 prohibits price discrimination,<sup>12</sup> Section 3 prohibits exclusive dealing contracts,<sup>13</sup> and Section 7 prohibits mergers that “lessen competition” or “tend to create a monopoly.”<sup>14</sup> In suits against corporations, Section 12 provides plaintiffs with venue and service-of-process options.<sup>15</sup> It states:

---

<sup>6</sup> GARNER, *supra* note 3, at 169 (quoting J.G. Mackay, *Introduction to an Essay on the Art of Legal Composition Commonly Called Drafting*, 3 LAW Q. REV. 326, 326 (1887)).

<sup>7</sup> *Outrageous Bills*, THE ECONOMIST, November 23, 2013, at 32. According to Donald Richie of the Sentae Historical Office, a staffer who took a copy of the 2400-page Affordable Care Act that the Senate Passed on Christmas Eve 2009 had to remove it from his luggage or face an excessive-baggage charge.

<sup>8</sup> GARNER, *supra* note 3, at 170 (citing *Fell v. Burchett*, 7 E. & B. 537, 539 (1857)). Lord Campbell criticized a poorly drafted statute as “an ill-penned enactment . . . putting Judges in the embarrassing situation of being bound to make sense out of nonsense, and to reconcile what is irreconcilable.” *Id.*

<sup>9</sup> *Dobson v. C.I.R.*, 320 U.S. 489, 495 (1943) (“[T]he tax code can never be made simple, but we can try to avoid making it needlessly complex.”).

<sup>10</sup> GARNER, *supra* note 1, at 631.

<sup>11</sup> 15 U.S.C. §§ 1-38 (1914).

<sup>12</sup> *Id.* § 13.

<sup>13</sup> *Id.* § 14.

<sup>14</sup> *Id.* § 18.

<sup>15</sup> *Id.* § 22.

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.

Congress's careless drafting raises a question: does the service-of-process clause apply to all antitrust cases, or is it limited to those cases in which a plaintiff establishes venue under Section 12's venue clause?

The Seventh Circuit correctly answered this question in *KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*<sup>16</sup> The court held that Section 12 "must be read as a package deal. To avail oneself of the privilege of nationwide service of process, a plaintiff must satisfy the venue provisions of Section 12's first clause."<sup>17</sup> In other words, plaintiffs cannot combine Section 12's liberal service-of-process provision with Section 1391's liberal venue provision. While the court found Section 12's language too ambiguous to rely on a plain-meaning rationale, it found nothing in Section 12's "text, purpose, or history" to compel the mix-and-match approach.<sup>18</sup>

This Comment argues that the Seventh Circuit reached the right result for the right reasons. Part I provides a background on the relationship between federal personal-jurisdiction and venue provisions and the Clayton Act's specific-to-antitrust personal-jurisdiction and venue provisions. Part I also provides a brief history of private antitrust litigation and establishes the facts underlying *KM Enterprises, Inc.* Part II focuses on the two competing readings of Section 12. It identifies the lines of reasoning that courts have used to reach these two readings. And Part III argues that the Seventh Circuit reached the right result for the right reason. It argues that Congress's obscure drafting demands a more careful and nuanced analysis. And it

---

<sup>16</sup> *KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*, 725 F.3d 718 (7th Cir. 2013).

<sup>17</sup> *Id.* at 730.

<sup>18</sup> *Id.*

argues that Judge Wood’s careful reasoning and plain, precise writing is a model for the plain-language reform that the legal profession sorely needs.<sup>19</sup>

## I. BACKGROUND

Judge Learned Hand observed that the Clayton Act, which Congress passed in 1914, was designed “to permit the plaintiff to sue the defendant wherever he could catch him.”<sup>20</sup> This observation notwithstanding, in order to sue in federal court, a plaintiff must establish, among other things, that the court has personal jurisdiction over the defendant and that venue is proper.<sup>21</sup> In addition to the general provisions found in federal law, Section 12 of the Clayton Act has its own personal-jurisdiction and venue provisions that apply to private plaintiffs bringing suits against corporate defendants. The relationship between these general principles and the Clayton Act’s specific provisions “has become tangled over the years.”<sup>22</sup>

### A. *General Federal Personal-Jurisdiction and Venue Principles*

Start with personal jurisdiction. Personal jurisdiction refers to a court’s power over the parties,<sup>23</sup> and it derives from the state, from the defendant’s contacts with the state, and the reasonableness of the assertion of judicial authority.<sup>24</sup> The “mechanics for asserting personal

---

<sup>19</sup> GARNER, *supra* note 3, at 300 (“It is hardly an overstatement to say that plain-language reform is among the most important issues confronting the legal profession. . . . We must learn to communicate simply and directly.”).

<sup>20</sup> *Thorburn v. Gates*, 225 F. 613, 615 (S.D.N.Y. 1915).

<sup>21</sup> Adam B. Perry, *Which Cases Are “Such Cases”: Interpreting and Applying Section 12 of the Clayton Act*, 76 *FORDHAM L. REV.* 1177, 1184 (2007).

<sup>22</sup> *KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*, 725 F.3d 718, 723 (7th Cir. 2013).

<sup>23</sup> *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979).

<sup>24</sup> *KM Enterprises, Inc.*, 725 F.3d at 723.

jurisdiction”<sup>25</sup> are found in Federal Rule of Civil Procedure 4(k),<sup>26</sup> which provides:

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) Federal Claims Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state’s court of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.<sup>27</sup>

Thus, subpart 1(A) provides that, subject to the constitutional due-process limitations protected by the minimum-contacts analysis,<sup>28</sup> federal personal jurisdiction is proper whenever the defendant would be amenable to suit under the laws of the state in which the federal court sits.<sup>29</sup> Subpart 1(C) provides that personal jurisdiction is proper if authorized by a federal statute, also subject to due-process limitations.<sup>30</sup>

---

<sup>25</sup> *Id.*

<sup>26</sup> FED. R. CIV. P. 4(k).

<sup>27</sup> *Id.* §§ (1)-(2).

<sup>28</sup> *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

<sup>29</sup> *KM Enterprises, Inc.*, 725 F.3d at 723 (citing FED. R. CIV. P. 4(k)(1)(A)).

<sup>30</sup> *Id.* (citing FED. R. CIV. P. 4(k)(1)(C)).

Unlike personal jurisdiction, which governs a court's power over a defendant, venue establishes which judicial district (among those that have personal jurisdiction) should hear the suit.<sup>31</sup> Venue is a "creature of statute"<sup>32</sup> that limits the number of potential districts where a defendant may be called to those that are fair and reasonably convenient.<sup>33</sup> 28 U.S.C. § 1391, the general federal venue statute, provides that venue is proper in:

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.<sup>34</sup>

The statute provides that corporate defendants are 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."<sup>35</sup> And in states with multiple judicial districts—like Illinois—the statute limits a corporation's residency to "any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district . . . in the district within which it has the most significant contacts."<sup>36</sup>

---

<sup>31</sup> *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979).

<sup>32</sup> *KM Enterprises, Inc.*, 725 F.3d at 724.

<sup>33</sup> *Leroy*, 443 U.S. at 180.

<sup>34</sup> 28 U.S.C. § 1391(b) (Date).

<sup>35</sup> *Id.* § 1391(c)(2).

<sup>36</sup> *Id.* § 1391(d).

### B. *The Clayton Act's Specific-to-Antitrust Provisions*

Rule 4(K) and Section 1391 govern personal jurisdiction and venue generally. But, as Rule 4(k)(1)(C) allows, Congress occasionally provides special federal rules for establishing personal jurisdiction or venue, or both.<sup>37</sup> The Clayton Act does just that. Section 12 states:

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.<sup>38</sup>

Section 12 provides for both personal jurisdiction and venue in the case of a corporate defendant. The first clause sets venue anywhere the corporation is an “inhabitant,” is “found,” or “transacts business.”<sup>39</sup> The second clause provides nationwide service of process and, therefore, nationwide personal jurisdiction.<sup>40</sup>

Congress’s ambiguous drafting raises a question: must Section 12’s venue and service-of-process provisions be read together as an integrated whole? If a plaintiff takes advantage of Section 12’s nationwide service-of-process provision—i.e., Section 12’s nationwide personal-jurisdiction provision—must he establish venue under Section 12 as well? Or may he “mix and match,”<sup>41</sup> relying on Section 12 for personal jurisdiction after he established venue under Section 1391? The Seventh Circuit answered this question in *KM Enterprises, Inc.* and correctly rejected the mix-and-match scheme.

---

<sup>37</sup> FED. R. CIV. P. 4(k)(1)(C).

<sup>38</sup> 15 U.S.C. § 22 (1914).

<sup>39</sup> *Id.*

<sup>40</sup> *See, e.g.,* Carrier Corp. v. Outokumpu Oy, 673 F.3d 430, 449 (6th Cir. 2012); GTE New Media Servs., Inc., v. Bell S. Corp., 199 F.3d 1343, 1350 (D.C. Cir. 2000).

<sup>41</sup> *KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*, 725 F.3d 718, 725 (7th Cir. 2013).



C. *The Facts: KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*

KM Enterprises, Inc. (KME) is an Illinois corporation.<sup>42</sup> Global Traffic Technologies, Inc. and its subsidiary, Global Traffic Technologies, LLC (collectively GTT) are Delaware entities headquartered in Minnesota.<sup>43</sup> The companies are competitors in a specialized market for devices that allow emergency vehicles to preempt traffic lights and pass through intersections with, rather than against, the light.<sup>44</sup> There are two primary traffic-signal-interrupter technologies: one relies on optical signals, and the other uses GPS signals.<sup>45</sup> KME sued GTT in the Southern District of Illinois, alleging violations of, among other things, the Clayton Act.<sup>46</sup>

In its suit—the latest in a series of legal disputes<sup>47</sup> between the rivals—KME alleged that GTT improperly persuades public agencies to specify GTT’s technology when drafting public contract requirements.<sup>48</sup> According to KME, this tactic ensures that contracts will be awarded to bidders who will install GTT’s units.<sup>49</sup> But that is not all: KME further alleged that GTT falsely informs these bidders that the optical signals are no longer available and instead offers a “dual” unit that houses both optical and GPS technology.<sup>50</sup> According

---

<sup>42</sup> *Id.* at 721.

<sup>43</sup> *Id.* at 721-722.

<sup>44</sup> *Id.* at 722.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* In 2010, GTT filed a patent-infringement suit against KME in the District of Minnesota. *Id.* KME then filed a separate suit, also in the District of Minnesota, which was consolidated with the patent case. *Id.* Next, KME sued the New York State Department of Transportation and its commissioner twice in 2011 in the Eastern District of New York; these suits challenged the Department’s award of traffic-preemption contracts to vendors of GTT technology. *Id.* KME followed that suit with this suit, which it filed in the Southern District of Illinois. *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

to KME, this bait-and-switch harms competition in the GPS market by locking purchasers into GTT's technology.<sup>51</sup>

None of GTT's activity, however, took place in Illinois.<sup>52</sup> While GTT had equipped several dozen traffic intersections within the Southern District of Illinois, none of the intersections had GTT's dual units—the core of KME's Clayton Act allegations.<sup>53</sup> While GTT made six direct sales to buyers within the district over a four-year period, these sales amounted to .002% of its sales during that time.<sup>54</sup> GTT does not install or maintain its equipment in the district; it does not maintain offices or agents in the district; and it does not directly promote its products in the district.<sup>55</sup> And the public procurement process by which traffic-signal-interrupter contracts are awarded takes place in Springfield (Central District of Illinois), while the third-party distributor that supplies GTT's products is located in Chicago (Northern District of Illinois).<sup>56</sup>

GTT moved to dismiss based on (among other things) improper venue.<sup>57</sup> The district court granted its motion on venue grounds, reasoning that GTT's peripheral contacts with the district could not support venue under Section 1391.<sup>58</sup> KME appealed, arguing that GTT's contacts were sufficient to support venue under Section 1391.<sup>59</sup> In so doing, KME “advance[d] a theory that would allow it to short-circuit the venue analysis by mixing and matching among the service-of-process and venue provisions of Section 12 and Section 1391.”<sup>60</sup>

---

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 722-723.

<sup>56</sup> *Id.* at 722.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 723.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* This was significant because GTT's contacts with the Southern District of Illinois were insufficient to establish venue under Section 12.

## II. THREE READINGS AND TWO INTERPRETATIONS OF ONE POORLY DRAFTED STATUTE

Courts have read Section 12 in either of two ways. The first reading would allow plaintiffs to establish personal jurisdiction under Section 12's nationwide service-of-process provision and then establish venue through either Section 1391 or Section 12. The Seventh Circuit referred to this as the "decoupled" reading because it allows plaintiffs to decouple Section 12's first clause from its second.<sup>61</sup> This Comment will do the same. The second reading, which this Comment refers to as an "integrated"<sup>62</sup> reading, requires plaintiffs to satisfy venue under Section 12 in order to use its liberal service-of-process provision. In other words, Section 12's clauses are an integrated whole. Courts have used three lines of reasoning to reach these two competing readings. This Section identifies and explores these competing and often overlapping analyses.

### A. *The Decoupled Reading*

The Third<sup>63</sup> and Ninth<sup>64</sup> Circuits take a decoupled reading of Section 12's venue and service-of-process requirements. The Ninth Circuit became the first federal court of appeals to address this issue in *Go-Video, Inc. v. Akai Electric Co.*<sup>65</sup> The case involved a lawsuit between Go-Video, a Delaware corporation with its principal place of business in Arizona, and a Japanese electronics trade association made up of multiple manufacturing companies.<sup>66</sup> Go Video sued the foreign companies for alleged violations of Section 1 of the Sherman Act.<sup>67</sup> Go-Video asserted a mix-and-match theory: it claimed that venue was

---

<sup>61</sup> *Id.* at 725.

<sup>62</sup> Perry, *supra* note 21, at 1198.

<sup>63</sup> *In re Automotive Refinishing Paint Antitrust Litig.*, 358 F.3d 288 (3d Cir. 2004).

<sup>64</sup> *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406 (9th Cir. 1989).

<sup>65</sup> *Id.* at 1407.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

proper in Arizona under Section 1391(d) and then served process on the Japanese defendants under Section 12 of the Clayton Act.<sup>68</sup> The district court found that personal jurisdiction and venue were proper in the District of Arizona under a decoupled reading of Section 12; the court held that the Japanese defendants' aggregate contacts with the United States were sufficient.<sup>69</sup> The Japanese defendants appealed to the Ninth Circuit, arguing that Section 12 ought to be read as an integrated whole, requiring Go-Video to satisfy the venue clause of Section 12, not just 1391.<sup>70</sup> If the defendants were right, Go-Video likely could not establish proper venue in the District of Arizona.<sup>71</sup> Plaintiffs argued that "such cases" in the text of the Clayton Act referred to *all* antitrust cases against a corporate defendant, not those in which a litigant established venue under Section 12.<sup>72</sup>

The Ninth Circuit affirmed. It initially observed that the answer was not clear from Section 12's plain language but concluded that the purpose of private antitrust enforcement supported a decoupled reading of Section 12.<sup>73</sup> Because specific venue provisions supplement general venue provisions—i.e., Section 12 supplements rather than replaces Section 1391—a plaintiff may properly satisfy venue under either provision.<sup>74</sup> The court also relied on Section 12's legislative history to support its decoupled conclusion.<sup>75</sup> The court thus concluded that Congress adopted Section 12 to "expan[d] the bounds

---

<sup>68</sup> *Id.* at 1407-1408.

<sup>69</sup> *Id.* at 1408.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* ("[A decoupled reading] is more closely in keeping with the manner in which courts have traditionally defined the relationship between one statute's specific venue provision and the general federal venue statutes.")

<sup>74</sup> *Id.* at 1408-1410.

<sup>75</sup> *Id.* at 1410-1411. The Court noted that the House introduced Section 12's venue provision to allow antitrust suits against a corporate defendant wherever it could be found. *Id.* And the Senate added the service-of-process provision without debate—specifically without any indication that it was intended to "be subject[]" to the section's venue provision." *Id.*

of venue” and was therefore reluctant to construe Section 12 in a way that would “limit[] the availability of the valued tool of worldwide service of process.”<sup>76</sup>

The Third Circuit faced the same question and reached the same result.<sup>77</sup> The case, *In re Automotive Refinishing Paint Litigation*, involved a class-action complaint<sup>78</sup> that alleged that multiple foreign and domestic defendants conspired to fix car-paint prices in the United States over a seven-year period.<sup>79</sup> The district court found personal jurisdiction over the alien defendants, construing Section 12 as authorizing worldwide service of process independently of its specific venue provision.<sup>80</sup> Two of the foreign defendants appealed the district court’s personal-jurisdiction finding, arguing that the clauses must be read as in integrated whole.<sup>81</sup>

The Third Circuit affirmed the district court’s decision.<sup>82</sup> Like the Ninth Circuit in *Go-Video*, the Third Circuit concluded that Section 12’s text was not dispositive.<sup>83</sup> The court relied on *Go-Video*, holding that Section 12’s service-of-process provision “is independent of, and does not require satisfaction of, the specific venue provision under Section 12.”<sup>84</sup> The court bolstered its conclusion by comparing its construction of Section 12 to its construction of Section 27 of the

---

<sup>76</sup> *Id.* at 1412. The court concluded that a decoupled view “is clearly the one more consonant with the purpose of the Clayton Act and better comports with a section designed to expand the reach of the antitrust laws and make it easier for plaintiffs to sue for antitrust violations.”

<sup>77</sup> *In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288 (3d Cir. 2004).

<sup>78</sup> *Id.* at 290. The U.S. Judicial Panel on Multi-District Litigation consolidated sixty-three actions filed in five states. *Id.*

<sup>79</sup> *Id.* at 290, n.1, 291.

<sup>80</sup> *Id.* at 291; *see In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2002 WL 31261330, at \*6-10 (E.D. Pa. July 31, 2002).

<sup>81</sup> *In re Automotive Refinishing Paint Antitrust Litig.*, 358 F.3d at 290.

<sup>82</sup> *Id.* at 305-306. Instead of relying on its own reading of Section 12, the court “interpret[e] a passage in which antecedents and consequents are unclear by reference to the content and purpose of the statute as a whole.”

<sup>83</sup> *Id.* at 295-296.

<sup>84</sup> *Id.* at 296-297.

Securities Exchange Act of 1934.<sup>85</sup> The Third Circuit took a broad view of federal personal jurisdiction in the Section 27 context, holding that “a federal court’s personal jurisdiction may be assessed on the basis of the defendant’s national contacts when the plaintiff’s claim rests on a federal statute authorizing nationwide service of process.”<sup>86</sup>

*B. The Integrated Reading: Reaching the Right Result for the Wrong Reasons*

Before the Seventh Circuit’s decision in *KM Enterprises, Inc.*, two federal courts of appeal read Section 12’s clauses as an integrated whole: the D.C. Circuit and the Second Circuit. The D.C. Circuit<sup>87</sup> concluded that the clauses were integrated under a plain-meaning analysis. Part III argues that this is an incomplete analysis. The Second Circuit<sup>88</sup> reached its integrated-whole conclusion on safer but still dangerous grounds; it relied on a plain-meaning analysis and, in dicta, further supported this conclusion with Section 12’s sparse legislative history. The Seventh Circuit took the analysis one step further. It agreed with the Third and Ninth Circuits that the text was not dispositive, but it concluded that an integrated reading was proper because it best fits with Congress’s purpose in drafting Section 12.

<sup>85</sup> Section 27 of the Securities Exchange Act of 1934 provides:

Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

15 U.S.C. § 78aa (Date) (emphasis added).

<sup>86</sup> *In re Automotive Refinishing Paint Antitrust Litig.*, 358 F.3d at 298 (citing *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 369 (3d Cir. 2002)).

<sup>87</sup> *GTE New Media Services Inc. v. Bell S. Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000).

<sup>88</sup> *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408 (2d Cir. 2005).

Part III argues that the Seventh Circuit reached the right result for the right reasons—Congress’s obscure drafting requires more than a plain-meaning analysis.

The D.C. and Second Circuits both rejected the mix-and-match approach reading. In *GTE New Media Services Inc. v. BellSouth Corp.*, a 2000 case decided by the D.C. Circuit Court of Appeals, the court held that the two clauses had to be read as an integrated whole.<sup>89</sup> The court noted that the plaintiff did not establish that the defendants were inhabitants of the district, could be found in the district, or transacted business in the district, as required by Section 12’s venue provision.<sup>90</sup> Plaintiff argued that this was not a precondition to using Section 12’s worldwide service-of-process provision.<sup>91</sup> The court disagreed. While it acknowledged the plaintiff’s desire to read Section 12’s venue provision expansively, it held that this desire did not justify disregarding the venue clause entirely.<sup>92</sup>

“It seems quite unreasonable,” the court held, “to presume that Congress would intentionally craft a two-pronged provision with a superfluous first clause, ostensibly link the two provisions with the ‘in such cases’ language, but nonetheless fail to indicate clearly anywhere that it intended the first clause to be disposable.”<sup>93</sup> The court concluded that “[a] party seeking to take advantage of section 12’s liberalized service provisions must follow the dictates of both of its clauses. To read the statute otherwise would be to ignore its plain meaning.”<sup>94</sup>

---

<sup>89</sup> *GTE New Media Services Inc.*, 199 F.3d at 1350.

<sup>90</sup> *Id.* at 1351.

<sup>91</sup> *Id.* at 1350.

<sup>92</sup> *Id.* at 1351 (“A party seeking to take advantage of section 12’s liberalized service provision must follow the dictates of both of its clauses. To read the statute otherwise would be to ignore its plain meaning.”).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*; see also *Management Insights, Inc. v. CIC Enterprises, Inc.*, 194 F. Supp. 2d 520, 531-532 (N.D. Tex. 2001) (noting that decoupling section 12’s clauses “completely eviscerates any semblance of a venue inquiry in antitrust cases involving corporate defendants—a result this Court finds Congress could not have intended.”).

Likewise, in *Daniel v. American Board of Emergency Medicine*, the Second Circuit interpreted Section 12 narrowly, reading the statute as an integrated whole.<sup>95</sup> There, the plaintiffs—a class of licensed physicians—brought an antitrust suit in the Western District of New York against two defendants incorporated in Michigan. The plaintiffs claimed that the defendants “colluded to restrain trade in connection with the practice of emergency medicine . . . and to monopolize or attempt to monopolize the market for . . . eligible [emergency] doctors.”<sup>96</sup> The district court dismissed the claim for lack of standing.<sup>97</sup> On appeal, the Second Circuit joined the D.C. Circuit in holding that “the plain language of Section 12 indicates that its service of process provision applies (and, therefore, establishes personal jurisdiction) only in cases in which its venue provision is satisfied.”<sup>98</sup>

In reaching this decision, the court focused on the plain meaning of the word “such,” as in:

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.<sup>99</sup>

The court reasoned that because Congress placed the word “such” soon after the semicolon in Section 12, and because the common meaning of “such” is “having a quality already or just specified . . . of the sort or degree previously indicated or implied, or previously

---

<sup>95</sup> *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408 (2d Cir. 2005).

<sup>96</sup> *Id.* at 414-417.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 423.

<sup>99</sup> 15 U.S.C. § 12 (Date) (emphasis added).



characterized or described,” the two clauses had to be read as an integrated whole.<sup>100</sup>

While the *Daniel* court found the plain meaning dispositive, it nonetheless considered the Third and Ninth Circuit’s extra-textual analyses.<sup>101</sup> It agreed with the Third and Ninth Circuits that the purpose of Section 12 was the “expansion of the bounds of venue.”<sup>102</sup> But it echoed the Supreme Court’s admonition that “[i]n adopting section 12 Congress was not willing to give plaintiffs free rein to haul defendants hither and yon at their caprice.”<sup>103</sup> The court concluded that there was no evidence to support the conclusion that Congress intended courts to split the two “provisions [and] combine the latter with an expanded general venue statute enacted decades later.”<sup>104</sup>

The court then went on to compare Section 12’s venue and service-of-process provisions to similar provisions in the Racketeer Influenced and Corrupt Organizations Act (RICO).<sup>105</sup> The court correctly noted that such comparisons are generally dangerous and,<sup>106</sup> because each provision contains different statutory text, found the

---

<sup>100</sup> *Daniel*, 428 F.3d at 424 (“The ‘quality’ of the cases specified in the provision of Section 12 preceding the semicolon is not simply that they are antitrust cases . . . it is that they are antitrust cases against corporations brought in the particular venues approved by Section 12. . . . It is ‘in such cases,’ . . . that Section 12 makes worldwide service of process available.”).

<sup>101</sup> *Id.* at 425.

<sup>102</sup> *Id.* (quoting *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1410 (9th Cir. 1989)).

<sup>103</sup> *United States v. Nat’l City Lines, Inc.*, 334 U.S. 573, 588 (1948), *superseded in part by statute*, 28 U.S.C. § 1404(a) (2012).

<sup>104</sup> *Daniel*, 428 F.3d at 425. The court observed that Congress adopted Section 12 to expand venue for antitrust lawsuits in light of restrictive general venue provisions. *Id.* But Section 1391, the general venue provision, is no longer as restrictive as it once was. *Id.* Thus, allowing a decoupled reading would essentially eliminate the venue inquiry entirely. *Id.*

<sup>105</sup> *Id.* at 426. Interestingly, the district court made identical comparisons in reaching its decoupled reading of Section 12. *Id.*

<sup>106</sup> *Id.* at 423 (citing *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 204 (2000) (“[A]nalysis of specific venue provisions must be specific to the statute.”)).

comparison unhelpful.<sup>107</sup> But it nonetheless found support for its integrated-reading conclusion when comparing Section 12 with the venue and personal-jurisdiction provisions of RICO.<sup>108</sup> With RICO, Congress chose to separate the venue and service-of-process provisions into separate subsections.<sup>109</sup> RICO's service-of-process section does not contain a limiting clause similar to Section 12's "in such cases," which, according to the court, made clear that Congress intended Section 1965(d) to apply to all cases brought under RICO.<sup>110</sup> The court concluded that the language and organizational differences between the Clayton Act and RICO make clear that "Congress was expressly rendering independent under RICO concepts that it had plainly linked under Clayton Act Section 12."<sup>111</sup>

### III. THE SEVENTH CIRCUIT REACHES THE RIGHT RESULT FOR THE RIGHT REASONS

The Seventh Circuit joined the D.C. and Second Circuits in *KM Enterprises, Inc.* by taking an integrated reading of Section 12.<sup>112</sup> The court began its analysis with the text: "As the Supreme Court has instructed time and again, if 'the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case, then that meaning controls and the court's 'inquiry must cease.'"<sup>113</sup> While it agreed with the Second Circuit's definition of "such,"<sup>114</sup> the

<sup>107</sup> *Id.* at 426.

<sup>108</sup> *Id.* at 427 (citing 18 U.S.C. § 1965(a), (d) (2000)). The court noted that the Clayton Act served as a model for RICO's venue and personal-jurisdiction provisions. *Id.*

<sup>109</sup> *Id.* (citing 18 U.S.C. § 1965(a) (venue), (d) (service of process)).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*, 725 F.3d 718, 730 (7th Cir. 2013).

<sup>113</sup> *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

<sup>114</sup> "[H]aving a quality or just specified'; 'of this or that character, quality, or extent: of the sort or degree previously indicated or implied'; or 'previously characterized or described: aforementioned.'"

Seventh Circuit noted “in such cases” does not specify the “quality” of cases specified in the first clause.<sup>115</sup> At a minimum, “such cases” must refer to antitrust cases brought against corporations.<sup>116</sup> But because the venue clause is not written in adjectival terms—it provides that antitrust cases “may be brought” in certain districts vs. antitrust cases that “are brought in” those districts—it “is not apparent that these provisions specify the ‘quality’ of the cases referred to in clause two.”<sup>117</sup> The court was thus “less confident [than the D.C. and Second Circuits] that the text alone drives [the] result.”<sup>118</sup>

But this did not convince the court that a decoupled reading was appropriate. It noted that decoupling Section 12 creates textual problems of its own: “If the clauses are not linked, then the venue language is superfluous,”<sup>119</sup> a result that courts generally disfavor.<sup>120</sup> The court echoed the D.C. Circuit’s concern that “in order to decouple Section 12’s venue and service-of-process provisions, we would have to assume that Congress intentionally joined the two provisions with a semicolon, but nevertheless intended for the second provision to render the first ‘disposable.’”<sup>121</sup>

<sup>115</sup> *Id.* at 729 (citing *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 424 (2d Cir. 2005)).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*; see also 14D CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3818 (3d ed. 2013) (“The [Second Circuit’s] decision rests on the assumption that ‘such cases’ refers to antitrust cases against corporations that are brought in the approved venues, but that is not a possible referent of ‘such cases’ because those words nowhere appear in the clause preceding the semicolon.”) (emphasis in original).

<sup>118</sup> *KM Enterprises, Inc.*, 725 F.3d at 729.

<sup>119</sup> *Id.*

<sup>120</sup> See, e.g., *Astoria Fed’l Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 112 (1991).

<sup>121</sup> *KM Enterprises, Inc.*, 725 F.3d at 729 (quoting *GTE New Media Services Inc. v. Bell S. Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000)); accord *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1413 (9th Cir. 1989) (recognizing that this interpretation of Section 12 had the potential to render the venue provision “wholly redundant.”).

Worse still, the Seventh Circuit noted that a decoupled reading of Section 12 “leads to some very odd results.”<sup>122</sup> Such a decoupled reading of Section 12 “renders the venue inquiry meaningless” because venue is satisfied in every federal judicial district under subsection (c)(2).<sup>123</sup> According to the court, this result 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.”<sup>124</sup>

Therefore, the Seventh Circuit concluded that, while Section 12’s language is too ambiguous to rely on the D.C. and Second Circuit’s plain-meaning rationale, the “practical effects of decoupling the clauses of Section 12 are ultimately too bizarre and contrary to Congress’s apparent intent for us to endorse.”<sup>125</sup> “Thus,” the court concluded, “Section 12 must be read as a package deal. To avail oneself of the privilege of nationwide service of process, a plaintiff must satisfy the venue provisions of Section 12’s first clause.”<sup>126</sup>

This is the right result, and the Seventh Circuit reached it for the right reasons. The fact that Congress passed Section 12 in order to expand venue in antitrust cases does not indicate that Congress wanted *nationwide* venue. To the contrary, it created specific limits on venue.<sup>127</sup> And, for many corporations, these limits result in a pool of

---

<sup>122</sup> *KM Enterprises, Inc.*, 725 F.3d at 729 (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“[I]nterpretations of a statute [that] would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.”)).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* (emphasis in original). The court elaborated: “Both statutes authorize venue only when certain enumerated requirements are met, be it that the defendant “transacts business” in the district, “resides” there, or something else. It would be quite strange to read two statutes that place limits on venue in a manner that eliminates those limits.” *Id.* at 729-730.

<sup>125</sup> *Id.* at 730.

<sup>126</sup> *Id.*

<sup>127</sup> *United States v. Nat’l City Lines, Inc.*, 334 U.S. 573, 588 (1948), *superseded in part by statute*, 28 U.S.C. § 1404(a) (2012) (“In adopting § 12 Congress was not willing to give plaintiffs free rein to haul defendants hither and yon at their caprice.”).

permissible districts much smaller than the entire United States. As the Seventh Circuit noted, “If something in Section 12 compelled the mix-and-match approach, then that is what we would follow. But we see nothing in the text, purpose, or history of Section 12 that casts doubt on the result we have reached.”<sup>128</sup>

### CONCLUSION

It is unfortunate that Section 12’s text cannot be dispositive in such a clear-cut issue.<sup>129</sup> Indeed, it borders on absurdity that Congress—whose job is to say “in the plainest language, with the simplest, fewest, and fittest words, precisely what” the law means<sup>130</sup>—could draft such a simple statute so poorly. But Judge Wood’s opinion provides a silver lining: her careful reasoning and plain, precise writing serve as a model for the plain-language reform that the legal profession sorely needs.<sup>131</sup> Legislators, judges, and lawyers would do well to follow suit.

---

<sup>128</sup> *KM Enterprises, Inc.*, 725 F.3d at 730.

<sup>129</sup> *See, e.g.*, Herbert Hovenkamp, *Personal Jurisdiction & Venue in Private Antitrust Actions in the Federal Courts: A Policy Analysis*, 67 IOWA L. REV. 485 (1982) (Section 12 is best read as an integrated whole.).

<sup>130</sup> GARNER, *supra* note 3, at 169.

<sup>131</sup> *Id.* at 300 (“It is hardly an overstatement to say that plain-language reform is among the most important issues confronting the legal profession. . . . We must learn to communicate simply and directly.”).