

AN EVALUATION OF THE LEGAL FRAMEWORK FOR RESOLVING DISPUTES IN THE DIGITAL ECOSYSTEM IN NIGERIA

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Abstract

The discovery of innovative wealth creation through digital assets has become one of the gifts of modern technology to economic empowerment and commercial advancement. Like every other field of property holding, ownership and control; investment in digital assets portends new forms of disputes that require quick, effective and cheap resolution mechanisms if the securities market is to maintain decorum and growth. Utilising the doctrinal research methodology, this article probes into the dispute resolution mechanisms contained in the Investment and Securities Act (ISA), for the resolution of capital market disputes in Nigeria to determine its adequacy in resolving disputes arising from digital assets transactions. The paper found that the promotion of convenient private dispute resolution models like Alternative Dispute Resolution (ADR) and a flexible adjudicatory model in form of specialised courts is required for dispute resolution in commercial and economic investments in the nature of digital assets. The paper also found that the model under ISA leaves much to be desired as the intrigues generated by the constitutional validity of the jurisdiction of the Investment and Securities Tribunal (IST) created thereunder compromised its efficacy and the lack of statutory backing for ADR processes thereunder could erode investors' confidence in the process. The paper recommends

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constitutional amendment for a thorough and detailed mechanism for dispute resolution in the capital market.

Keywords: Digital ecosystem, dispute resolution, Investment and Securities Act, Investment and Securities Tribunal

1. Introduction

The resolution of disputes in the capital market is important for its stability and enhances economic growth by the promotion of investors' confidence. The expansion of capital market participation within Nigeria has resulted in diverse forms of disputes in securities trading, thus necessitating a well-structured mechanism for dispute resolution that would effectively address the specific needs of the capital market.

Key to the resolution of disputes is the availability of an adequate and effective adjudicatory or non-adjudicatory legal framework within the jurisdiction in question. Accordingly, dispute resolution mechanisms are always entrenched in legislation made for that purpose, and in some cases, in the Constitution. In Nigeria, the power and jurisdiction to adjudicate are Constitutional matters.¹ The institutionalisation of a judicial apparatus for dispute resolution as the third tier of government is constitutionally guaranteed while private dispute resolution mechanisms utilising ADR are promoted within the constitutional framework of commercial growth, justice and equity.

Disputes in the capital market, being commercial and economic in nature, would in most cases necessitate preference for ADR or specialised courts that can dispose of matters in a fast and cost-effective manner that preserves the market indices; and also promotes easy enforcement of decisions emerging from dispute resolution.² The extant framework for investment securities in Nigeria is the Investment and Securities Act 2007 (ISA); which provides for adjudicatory means of

¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), (hereinafter CFRN), s 6.

² CFRN, s 287; Sheriffs and Civil Process Act, Cap S6, LFN 2004 (SCPA) and Judgement (Enforcement) Rules (JER) made pursuant to s 94 of SCPA.

dispute resolution within the capital market. The Securities and Exchange Commission Rules and Regulations 2013 (SECRR) provides further for administrative dispute resolution and promotes private dispute resolution mechanisms.

These dispute resolution mechanisms were articulated before the emergence of regulation for digital assets within the Nigerian securities market through guidelines and rules made to standardise the digital assets ecosystem. Nonetheless, digital assets have the potential of enlarging the nature of disputes or creating novel dispute forms in the capital market in a manner that interrogates the adequacy of the existing framework under ISA for capital market disputes resolution.

While it is not in doubt that disputes in the digital assets ecosystem are subject to the dispute resolution mechanisms provided under ISA and SECRR; the adequacy of the available mechanisms namely, the administrative hearing, ADR processes and the Investment Securities Tribunal (IST) becomes a question of interest if a viable ecosystem must be maintained.

Key issues that this paper sought to interrogate therefore includes the sustainability of the exclusive jurisdiction of the IST in the light of constitutional provisions and the jurisdiction of the Federal High Court (FHC). Judicial pronouncements in this regard appear inadequate in addressing the fundamental issues in respect of this and have not been effective in preventing forum shopping and delay in capital market dispute resolution. Again, the challenge of the validity and sufficiency of ADR procedures contained in Rules in building confidence in investors as a viable option to adjudication needs interrogation which this paper sought to provide. The paper further inquiries into the propriety of having the whole dispute resolution process in respect of the capital market subject to administrative and executive control rather than placing that under a judicial process that guarantees its independence. The question of whether the nature of disputes generated by digital assets is amenable to the procedure for dispute resolution mechanism under ISA is also probed into by the paper.

To resolve the issues and determine the adequacy or otherwise of the dispute resolution mechanisms under the ISA in resolving disputes in the digital assets' ecosystem; the paper examined the nature of capital market disputes especially as it relates to securities; the rationale for establishing a specialised tribunal for resolving securities disputes and the sufficiency of same. The critical issue of the exclusive jurisdiction of the IST in the light of constitutional provisions is considered along with the propriety of the administrative and ADR processes established for dispute resolution in the capital market.

2. Emergence of Digital Assets and the Nature of Capital Market Disputes

This paper does not attempt any technical use of the term digital assets, rather than its generic use as assets in digital form. Even though it could be used distinctively from virtual assets and crypto assets,³ for the purpose of this paper and the present state of the law in Nigeria, the term has been used to subsume other forms of assets electronically traded and maintained. These forms of assets generate new forms of disputes that are specialised and rely on both traditional means of dispute resolution and technology.

3. Rationale for a Specialised Tribunal for the Capital Market

Generally, specialised courts are often used when technical, professional and time sensitive cases are involved. This allows for expertise and expeditious handling of cases in a manner not subject to the rigours and detailed procedural observations of the regular courts. Hence, rules as to evidence, discoveries and adjournments are dispensed with by specialised courts. Such courts are also guided by objectivity, brevity and professional expertise as the law establishing the court may prescribe the qualification of persons that may serve as judges of the court.

³ SEC New Rules on Issuance, Offering Platforms and Custody of Digital Assets; Pt A, r 2.0.

Specialised tribunals are usually endowed with discretion to adjust proceedings and procedures to reflect the need of the parties,⁴ and where necessary, costs are dispensed with. Under the IST Rules of Procedure, it is stated that the fundamental objectives of the IST include the timely and efficient resolution of investments securities and capital market disputes with the guiding principles of fairness, speed, flexibility and transparency. The establishment of the specialised tribunal for the capital market promotes market integrity by dealing with cases in ways which are proportionate to the complexity of the issues and the resources of the parties⁵ and also helps in aiding for expert representation where necessary.

4. Dispute Resolution Mechanisms under ISA

ISA provides for the IST as the only adjudicatory body cognisable thereunder.⁶ However, under the SECRR, further dispute resolution procedures were established: the Administrative Proceeding Committee (APC)⁷ was established thereunder in pursuance of section 310 of ISA and a procedure for ADR. The IST Rules also provides for ADR. These dispute resolution bodies are discussed forthwith.

4.1 The Administrative Proceeding Committee

The APC is an administrative body with quasi-judicial powers to hear capital market operators and other intermediaries that are perceived to have breached or failed to comply with the provisions of the ISA and the SECRR. The APC is seized of the power to hear such cases after an allegation have been brought before SEC. Under the APC Rules of Procedure contained in schedule VIII to the SECRR, the APC's role in securities dispute resolution is identified as 'giving opportunity for fair hearing to capital market operators and other institutions in the market who are perceived to have violated or have actually violated or threatened to violate the provisions of the ISA and the Rules and

⁴ IST Rules, Order 2.

⁵ *Ibid.*

⁶ ISA, s 274.

⁷ SECRR r 599.

Regulations made thereunder or such operators against whom investors have lodged complaint.’

It would, therefore, appear that its power is limited to where there is a violation or a threat to violate the provisions of ISA and SECRR and there has been a report to the SEC which must be investigated.⁸ However, at a closer examination of the powers of the APC,⁹ it appears there is a wide range of issues that can be dealt with by the APC. Again, decisions of the APC only become effective if ratified by the SEC, and when there is no Board, the Minister of Finance.¹⁰ Since the APC is established in pursuance to section 310 of ISA, it is purely a committee and hence an administrative body under the control of the SEC and the Minister of Finance, who is a political appointee. Appeal emanating from the decisions of the APC lies to the IST.¹¹

4.2 ADR Procedure under ISA

The SECRR established a procedure for negotiated settlement of disputes, which appears to be in relation to proceedings instituted or that may be instituted before the APC. Under Rule 600 of the SECRR, any person notified that a proceeding is or may be instituted against him or any party to a proceeding already instituted, may, at any time, propose in writing to SEC a request for a negotiated settlement. However, the procedure for negotiated settlement is not available in cases involving insider trading, accounting fraud, market manipulation and any party who had previously utilized the negotiated settlement.¹²

When a party submits to a negotiated settlement, the party making the request is deemed to have waived the right to initiate further hearing pursuant to the statutory provisions under which the proceedings are to be or have been instituted; file proposed findings of facts and conclusion of law; have recourse to post hearing procedures and judicial review by any court. The party is also deemed to have waived such provisions of

⁸ *Ibid*, r 3.

⁹ APC Rules of Procedure r 15.

¹⁰ *Ibid*, r 17(a).

¹¹ APC Rules of Procedure, Rule 18.

¹² SECRR, r 600 (2).

the SECRR or other requirements of law as may be construed to prevent any staff member of the SEC from participating in the preparation of, or advising SEC as to, any order, opinion, finding or fact, or conclusion of law to be entered pursuant to the request; and any right to claim bias or prejudgment by the SEC based on the consideration of or discussion concerning settlement of all or any part of the proceedings.¹³

ADR may also be applied to cases before the IST. By virtue of Rule 3 of the IST Rules of Procedure; the IST is enjoined to promote reconciliation between the parties, encourage and facilitate the amicable settlement of disputes in any matter before it. Pursuant to this directive; the IST may, with the consent of parties, refer a dispute to the IST Alternative Dispute Resolution Centre (ISTADRC). A settlement agreement entered into at the ISTADRC, arising from a walk-in, may, by leave of the IST, be made the judgment or order of the IST and enforced in like same manner as its judgment or order.

4.3 The Investment and Securities Tribunal (IST)

The IST is designed to provide specialized and fast-track adjudicatory services in the capital market. The necessity of speed as a reason for its establishment justified the provisions of timeframe within which it ought to complete cases before it. ISA provides that cases before the Tribunal must be disposed of within three months from date of commencement of hearing of substantive case.

Judgments of the IST are enforced as judgments of the FHC upon registration thereat.¹⁴ Also, appeals from the IST lie directly to the Court of Appeal (CA) placing its judgements on equal footing with that of the High Courts.¹⁵ The membership of the IST comprises of a Chairman and 9 other members, who must be either legal practitioners and/or experienced capital market professionals. The IST also has a Chief Registrar with power to administer oath and perform other duties with

¹³ *Ibid*, r 600 (3) (d).

¹⁴ ISA s 293 (3).

¹⁵ *Ibid*, s 289

respect to any proceedings in the IST as may be prescribed by the Rules or delegated by the Chairman.

The jurisdictional competence and coverage of the IST as provided under the ISA is as follows:

- (1) The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving-
 - (a) a decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute-
 - (i) between capital market operators;
 - (ii) between capital market operators and their clients;
 - (iii) between an investor and a securities exchange or capital trade point or clearing and settlement agency;
 - (iv) between capital market operators and self-regulatory organisation;
 - (b) the Commission and self-regulatory organisation;
 - (c) a capital market operator and the Commission;
 - (d) an investor and the Commission;
 - (e) an issuer of securities and the Commission; and
 - (f) disputes arising from the administration, management and operation of collective investment schemes.
- (2) The Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.
- (3) In the exercise of its jurisdiction the Tribunal shall have the power to interpret any law, rules or regulation as may be applicable.

The IST is clothed with both original and appellate jurisdiction. Its appellate jurisdiction can only be triggered¹⁶ where the APC has decided and same is confirmed by the SEC in relation to the matters set out in Section 284 (1) (a) - (iv); under any of the circumstances set out in Section 284 (10)(b) - (f); and or any other matter as may be prescribed

¹⁶ ISA, s 236.

by an Act of the National Assembly.¹⁷ Appeals from the IST lie to the CA.¹⁸

Section 234 of ISA provides for criminal prosecution to be handled by the Attorney General of the Federation and Attorney General of the States. Thus, the IST lacks the jurisdiction to try criminal matters¹⁹ except as provided under the Act and may refer matters before it to such other law enforcement agencies as it is allowed under the law to partner with for further investigation. However, the IST lacks mechanism necessary for the enforcement of its Orders. Every decision of the IST must be registered in the FHC and shall be enforced by the FHC as though the decision was handed down by it. This is also applicable to negotiated settlement.

5. The Investment and Securities Tribunal and the Federal High Court

Both sections 284 and 294 of ISA proclaimed expressly that the jurisdiction of the IST shall be exclusive. This signifies the intention of the law to donate jurisdiction to the IST alone on any issue upon which it exercises jurisdiction. Exclusive jurisdiction is granted courts to avoid overlaps, forum shopping and delay in litigation caused by objections as to jurisdiction. In addition, exclusive jurisdiction is also meant to achieve such objectives such as the promotion of expertise in adjudication, speed and confidence of investors.

The grant of exclusive jurisdiction to IST by the ISA or at all is contentious based on constitutional provisions. Under the CFRN, whereas courts may be established by laws, such courts would only exercise jurisdiction in subjection to any court equivalent to the High Court established by the constitution.²⁰ What this signifies is that no court can be established with powers and jurisdictions equal to that of the High Court by the provisions of the law. This provision of the CFRN

¹⁷*Keystone Bank Ltd v Ebuh & Ors.*, (2021) LPELR-52773 (CA) 60-63.

¹⁸ ISA, s. 241(3), s 242 and 243.

¹⁹*Oni v Administrative Proceedings Comm.*, S.E.C.(2014) 13 NWLR (Pt. 1424) 334.

²⁰CFRN, s 6(5).

became necessary to protect the exclusive and unlimited jurisdiction that the CFRN granted to courts of that cadre.

The jurisdictional competence of the IST appears explicit under ISA, but for the provisions of the CFRN which seemed to have given exclusive powers to the FHC to exercise jurisdiction on the same matters or similar matters wherein the ISA vests exclusive power on the IST. The FHC is established under section 249 of the CFRN and section 251 therein gives it unlimited and exclusive jurisdiction in certain cases. These are cases involving the revenue of the Government of the Federation where the Government or any organ or a person acting as its representative is a party; the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation; customs and excise duties; banking, foreign exchange, currency or other fiscal measures; the operation of the Companies and Allied Matter Act (CAMA) or any other enactment regulating the operation of companies incorporated thereunder; any enactment relating to copyright, patents, designs, trademarks and merchandise marks; and admiralty jurisdiction.

The FHC supervises winding up proceedings of companies in Nigeria as provided by the law;²¹ the dissolution of incorporated trustees registered under Part F of CAMA. It makes vital appointments such as appointment of a liquidator, official receiver, provisional liquidator, manager during winding up and liquidation processes. The FHC monitors and may cancel alteration of a company's objects. It may also order the rectification of register of members; and a meeting of creditors or class of creditors. All these powers, it would appear, overlaps or rather subsume the issues that the IST is established to deal with.

Learned authors²² have consistently pointed out the challenges posed by the jurisdiction of FHC to the exclusive jurisdiction given the IST under

²¹ CAMA 2020, s 498.

²²M Sani, 'Modern Trend in Commercial Dispute Resolution Through Arbitration in Nigeria: Prospects and Constraints,' [2015] (8) *Journal of Marketing and Consumer Research*, 14; S Kiyong and E Uwaifo, 'Nigeria Capital Market: Legal and Regulatory

ISA. Not only are judicial authorities on the issue uncertain, they appear insufficient in averting perpetual recourse to forum shopping, raising of objection on jurisdiction and the ensuing, inevitable delay in litigation. In *Wealthzone Limited v SEC*,²³ the CA expressed the view that although the FHC and the IST have their origins rooted in the Constitution; that does not suggest that there are no jurisdictional conflicts between the two; and that the two adjudicatory bodies are generally clothed with exclusive jurisdictions in determined borderline areas which clearly overlap, thus creating difficulties for the parties in the appeal as well as to the Capital and Securities Investments Community.

In the earlier case of *SEC v Kasunmu*,²⁴ the CA concluded that the jurisdiction of the IST can only be said to be concomitant with that of the FHC.²⁵ In reaching that decision, the court held that section 242 of ISA 1999 conflicts with section 251(1)(r) of the Constitution which vests jurisdiction on the Federal High Court and is therefore void to the extent of its inconsistency.

The decision in the case of *Nospetco Oil & Gas Ltd. v Olorunnimbe*,²⁶ is instructive. In that case, Nospetco entered into a Joint Venture (JV) Memorandum of Understanding for the supply of industrial fuel with the 1st – 14th Respondents (the JV Partners) which was under an investment scheme declared illegal by SEC. Being the apex regulatory body in the capital market, SEC stopped Nospetco's business activities and froze all its accounts in the commercial banks. All efforts to recover money invested by the JV Partners, which remained in the custody of the Central Bank of Nigeria (CBN) proved impossible. The JV Partners therefore brought an action to recover their money from the SEC and CBN before the IST. Nospetco filed an objection on the ground that the IST lacked jurisdiction to entertain the matter, which was dismissed by the IST. Upon appeal to the CA, the issue of jurisdiction was resolved

Review and Recommendation,' A Collaborative Report of: The Nigeria Capital Markets Solicitors Association, and Law Society of England and Wales (2015) 31

²³ (2016) JELR 41128 (CA), Appeal No. CA/A/268/2008 (14 Dec 2016).

²⁴ (2009) 10 NWLR (Pt 1150) 509.

²⁵ *FIS Securities v SEC* (2004) 1 NISLR 165 at 205.

²⁶ [2022] 1 NWLR (PT 1812) 496.

in favour of Nospetco. Upon further appeal, the Supreme Court (SC) affirmed the decision of the CA to the effect that collective investment scheme is within the jurisdiction of the IST by virtue of sections 153(1), 284(1)(f) and 315 of the ISA. However, as to the exclusive jurisdiction of the IST on the claim of the JV Partners, the SC posited that the principal claims of the JV Partners being against the administrative actions of CBN and SEC which are federal government agencies, the IST lacked the jurisdiction to determine the claim.

However, the SC in *Ajayi v SEC*²⁷ upheld the power of the IST to try officers for offences created under the ISA by virtue of section 236(1) of the ISA, rule 13 of the APC (SEC) Rules of Procedure and Schedule VII of SECRR. In that case, the Supreme Court²⁸ affirmed the exclusive status of IST as court of first instance for capital market disputes arising from hearings by the APC, but however held that the IST cannot grant an order of *certiorari*.

It must be appreciated that although the CFRN permits the creation of courts by laws, both at the Federal and State levels, such courts must have ‘subordinate jurisdiction to that of the High Court.’²⁹ While it may be contended, albeit, subjectively, that the constitutional provision may not divest the National Assembly of power to establish a court or tribunal from where appeal goes directly to the CA as in the case of the IST; such argument may not be supportable for a court created by a law, not the constitution, divesting the FHC created under the constitution of its jurisdiction. The idea behind creating a tribunal to hear cases in respect of the capital market is for such cases to be heard expeditiously and attended to by experts in the field. But, what the law achieved ultimately is a scenario where the contention over jurisdiction may be fought to the SC thereby leading to delay, waste of funds and uncertainty in the law.

²⁷ (2023) 6 NWLR (Pt. 1881) 533 at 555.

²⁸ (2023) 6 NWLR (Pt. 1881) 533 SC; (2009) 13 NWLR (Pt. 1157) 1 CA.

²⁹ CFRN section 6 (5) (b).

Complicating the issue is the fact that what became ISA was initially part of CAMA.³⁰ Accordingly, the notion that ISA regulates issues relevant to company law cannot be over emphasised. The non-issuance of share certificates, for instance, could be viewed as a capital market dispute but has its root in CAMA;³¹ demonstrating therefore an interrelationship between the operations of CAMA and capital market disputes. Apart from the conspicuous overlaps in the ISA and CAMA, section 251(1)(r) of the CFRN grant exclusive jurisdiction to the FHC in civil actions relating to ‘any action or proceeding for a declaration or injunction affecting the validity of an executive or administrative action or decision by the Federal Government or any of its agencies.’

Actions in respect of securities would always involve SEC as a body and indeed; in some instances may include both the Corporate Affairs Commission (CAC) and the Central Bank of Nigeria (CBN) where digital assets are in issue. In such instances, if declarative or injunctive orders are sought against these agencies, the IST becomes decapacitated. This becomes more obvious when the status of the IST resident with the Executive rather than the judiciary is considered against the provisions of section 6(5) of the CFRN which sanctions the creation of further courts by laws to be housed in the judiciary. In *Okeke v SEC*,³² it was the reasoning of the CA that the exclusive jurisdiction conferred upon the FHC cannot be whittled down or taken away by an ordinary Act of the National Assembly, in the absence of any constitutional amendment.

6. Adequacy of the Dispute Resolution Mechanisms under ISA for Resolving Digital Assets Disputes

It is obvious that the jurisdiction of the IST appears confined to controversies; paramount of which is its cloning of the jurisdiction of the FHC. Also, the exercisable inherent powers of the IST are limited. The IST lacks the powers of a superior court of record to grant such orders as mandamus and certiorari. Compounding the challenges is the

³⁰ ISA, s 263(1)(d).

³¹ CAMA, s 146.

³² (2018) 12 NWLR (Pt. 1634) 462.

residence of the IST in the executive arm of government, rather than in the judiciary as the CFRN dictated. The challenge with adjudicatory institutions placed under the control of the executive is the compromise of the independence and impartiality of such institutions. Investors would, in the circumstances, find it difficult to invest in such a market that appears more interested in administrative disputes resolution mechanism rather than detailed private dispute resolution mechanisms.

By the nature of digital assets, they are capable of transnational ownership and control. Disputes in respect of such assets ought to be determined with speed and expertise. While it is trite that foreign companies can maintain actions in Nigeria through their agent or directly without the necessity of incorporation in Nigeria,³³ the nature of digital assets warrants a reconsideration of the dispute resolution apparatus within the capital market as presently constituted. Usually, multinational commercial investors would tend to avoid national courts, especially where contention on jurisdiction is likely to take long period to resolve. The lack of clarity as to the jurisdiction of the IST becomes an issue when digital assets are in dispute. Whereas the IST established an ADR procedure under its rules and same is provided for by the SECRR in respect of the APC, both procedures accommodated under the rules aforementioned are not statutorily determined. Moreso, the issues upon which ADR could be pursued under the SECRR are limited.³⁴

Beyond generating multiple cross border claims, digital assets disputes may require expertise that ADR, not court proceedings, can provide. Recognising ADR as a major dispute resolution mechanism for all forms of digital assets disputes could avert issues such as conflicts of law, foreign jurisdiction disputes, enforcement of judgements clog and disputes as to applicable laws.

³³CANA, s 60; *Watanmal Singapore PTE v Liz Olofin & Co Ltd* (1998) 1 NWLR (Pt. 533) 311.

³⁴SECRR, r 600

No doubt, issues relating to company management and control, capital market, banking and insurance are interwoven and the activities of the regulation institutions are such that whenever there is a dispute in the capital market, the government agencies involved in all these sectors could be involved. Divesting the FHC of jurisdiction on issues of securities trading, one may therefore observe, is hardly possible without a constitutional surgery.

7. Conclusion and Recommendations

The idea of a specialised court to settle investment and securities disputes is a good one move. However, the IST, APC and ADR mechanisms available for dispute resolution in the capital market in Nigeria leaves much to be desired. Rather than achieve the purpose for their establishment, the bodies are in such a form that they cannot always be wholly and ideally utilised for resolution of investment disputes as contemplated under the law by which they were created. Given that digital assets are in a form that could always generate cross border disputes, an effective dispute resolution mechanism is most urgently required to ensure investors' confidence.

It is therefore the position of this paper that a dispute resolution structure that promotes ADR as the major dispute resolution model in the capital market should be adopted. Further, the establishment of a specialised court with the mandate to hear cases in respect of investment securities and other allied matters in the banking and insurance sector should be established in the constitution. This would help in effective, adequate and speedy resolution of disputes in the sector and reduce issues of jurisdictional overlap.