

Federal Court Section ACBA Bench-Bar Conference 2017

**Constitutional Challenges,
Jurisdiction & Practical Advice
from the Clerk of Courts**

Jurisdiction

- 28 U.S.C §1441- General Removal
 - Authorizes a defendant to remove from state court to federal court “any civil action brought in the state court of which the district courts of the United States have original jurisdiction.”

Federal Question Cases

- With respect to federal question cases, “[t]he well-pleaded complaint rule applies to the original jurisdiction of the district courts as well as to their removal jurisdiction.”

Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 10 n.9 (1983); see also Holmes Group Incorporated v. Vornado Air Circulation Systems, 535 U.S. 826, 830 n.2 (2002).

Federal Question Cases

- Thus, a defendant may not remove based upon their federal defenses or federal counterclaim.

Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475 (1998) (affirmative preclusion defense resting on prior federal judgment is not a basis for removal); *Holmes Group*, 535 U.S. at 831-32 (rejecting argument that counterclaim should be regarded as part of a well-pleaded complaint because it would "radically expand" removal jurisdiction).

Federal Question Cases

- What is a plaintiff to do?
 - The plaintiff may take advantage of the well-pleaded complaint rule and prevent possible removal by omitting federal claims. The Supreme Court has noted that, “[t]he rule makes the plaintiff master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”
Caterpillar Incorporated v. Williams, 482 U.S. 386, 392 (1987).

Federal Question Cases

- An “independent corollary” to the well-pleaded-complaint rule is the “artful pleading” doctrine, which holds that “a plaintiff may not defeat removal by omitting to plead necessary federal questions.”
Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475 (quoting *Franchise Tax Board*, 463 U.S. at 22). If the federal court determines that the plaintiff has “artfully pleaded” claims in this manner, it may allow removal even though no federal question appears on the face of the complaint. *Id.* The artful-pleading doctrine generally allows removal in cases where federal law completely preempts state-law claims pleaded by the plaintiff. *Id.*

Supplemental Jurisdiction

- 28 U.S.C. §1367
- The Court has held, “applies with equal force to cases removed to federal court as to cases initially filed there; a removed case is necessarily one ‘of which the district courts ... have original jurisdiction.’”

City of Chicago v. International College of Surgeons, 522 U.S. 156, 165 (1997) (citing 28 U.S.C. § 1367(a)) (further citation omitted).

Supplemental Jurisdiction

- Thus, when joined state law claims meet the statutory standards of supplemental jurisdiction, federal courts may exercise removal jurisdiction over both the state and the federal claims.

The Federal Courts Jurisdiction and Venue Clarification Act

- Clarified what a federal court must do when a federal question claim is joined by a state law claim that is not within the original or supplemental jurisdiction of the federal court.
- In such case, the entire case may be removed and the district court must then sever and remand the state law claims.
28 U.S.C. § 1441(c).

Removal Procedure

- The statutory procedures for removal are to be strictly construed.
Syngenta Crop Protection Inc. v. Henson,
537 U.S. 28, 32 (2002).

Removal Procedure

- A defendant removing a civil action must file in the U.S. district court for the district and division in which the state proceeding is pending a “notice of removal” that contains “a short and plain statement of the grounds for removal” and that attaches the process, pleadings, and orders served upon the defendant in the action. 28 U.S.C. § 1446(a).

Removal Procedure

- In

Dart Cherokee Basin Operating Company v. Owens, 135 S. Ct. 547, 554 (2014), the Supreme Court held that a notice of removal need only plausibly state a basis for federal jurisdiction. It need not include evidence that jurisdictional requirements, such as the amount in controversy, are met.

Removal & Diversity Jurisdiction

- In cases founded upon diversity jurisdiction, removal is not permitted more than one year after commencement of the action unless the court finds that the plaintiff has “acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C. § 1446(c)(1). The Federal Courts Jurisdiction and Venue Clarification Act of 2011, P.L. 112-63, added provisions relating to ascertaining the amount in controversy in diversity cases. 28 U.S.C. § 1446(c)(2).

Removal Procedure

- Removal is effected when, promptly after filing the notice of removal with the federal court, the defendant files a copy with the clerk of the state court and gives written notice to all adverse parties. *Id.*

§ 1446(d).

What is a plaintiff to do if removal was improper?

- Motion for Remand
- **Remands—28 U.S.C. § 1447(c)**
- 28 U.S.C. § 1447(c) provides that a motion to remand on grounds other than subject matter jurisdiction must be filed within thirty days of removal. This implies that a motion to remand on subject matter jurisdiction grounds may be filed at any time.

Remand

- This implies that a motion to remand on subject matter jurisdiction grounds may be filed at any time.
- The statute further provides that, “[i]f at any time before final judgment it appears that the district court lacks subject-matter jurisdiction, the case shall be remanded.” *Id.* § 1447(c).

Thou Shall Not Remove Without an Objectively Reasonable Basis

- The district court has discretion to enter an order awarding attorney's fees when remanding a removed case to state court under Section 1447(c), unless the removing party has "an objectively reasonable basis for removal."

Martin v. Franklin Capital Corporation, 546 U.S. 132, 141 (2005).

Remanding Pendent State Claims

- Federal courts have a general non-statutory power to remand pendent state claims besides the power to remand cases under the removal statutes. The Court in *Carnegie-Mellon University v. Cohill* held that federal courts possessing discretion to hear pendent state law claims may remand those claims to state court instead of dismissing them outright.

Carnegie-Mellon University v. Cohill, 484 U.S. 343 (1988).

What if the Court denies the Motion to Remand?

- An order denying a motion to remand is not a final judgment and is, therefore, not reviewable until after final judgment, unless certified pursuant to 28 U.S.C. § 1292(b).

The Court has granted Remand, Can the defendant appeal?

- Whether an order granting a motion to remand is appealable presents a more difficult question. Although

Section 1447(d) quite clearly provides

that, with one exception, a remand order is not reviewable on appeal, the Court has not adopted that reading.

Are Remands Reviewable?

- Instead, the Court has held that "[Section] 1447(d) must be read *in pari materia* with [Section] 1447(c), thus limiting the remands barred from appellate review by [Section] 1447(d) to those that are based on a ground specified in [Section] 1447(c)."

Carlsbad Technology v. HIF Bio, Inc.,
556 U.S. 635, 638 (2009).

Are Remands Reviewable?

- There is no dispute that, when a district court remands a properly removed case because it lacks subject-matter jurisdiction, the order is unreviewable.

Things Remembered v. Petrarca, 516 U.S. 124, 127-28 (1995) (interpreting prior version of statute); Cook v. Wikler, 320 F.3d 431, 435-39 (3d Cir. 2003).

Are Remands Reviewable?

- Remands based on a procedural defect in the removal petition are not reviewable.

Powerex Corp. v. Reliant Energy Services, 551 U.S. 224, 231 (2007).

- When, however, a court remands state law claims as a matter of discretion under Section 1367(c), such an order is not based on the lack of subject matter jurisdiction and is, therefore, reviewable. *Carlsbad Technology*, 556 U.S. at 638 (although several concurring Justices suggested that this area was ripe for revisiting in an appropriate case).

Test Your Knowledge

- Can a resident defendant remove based upon Diversity?

Test Your Knowledge

- If the plaintiff does not move to remand within 30 days, does the case stay in Federal Court?

Test Your Knowledge

- If the plaintiff amends the complaint to request damages in excess of \$75,000 within one year of filing the complaint, can a defendant remove the case to federal court?

Test Your Knowledge

- Once the complaint is amended to be in excess of \$75,000, can the case be removed on diversity grounds?

Test Your Knowledge

- If a plaintiff amends a complaint to add a federal claim, may a defendant remove to Federal Court?

Test Your Knowledge

- Can a second defendant who is served in excess of 30 days after the initial defendant remove the matter to Federal Court?

Test Your Knowledge

- Is the award of attorney's fees for improper removal mandatory?

Test Your Knowledge

- Must a Court remand a case if the plaintiff filed a motion for remand and agrees that he will not seek more than \$75,000 in damages?

Test Your Knowledge

- When you have multiple defendants, do you need the consent of all the defendants to remove the case to Federal Court?

United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 83. Courts of Appeals (Refs & Annos)

28 U.S.C.A. § 1292

§ 1292. Interlocutory decisions

Currentness

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction--

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

CREDIT(S)

§ 1292. Interlocutory decisions, 28 USCA § 1292

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 49, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Sept. 2, 1958, Pub.L. 85-919, 72 Stat. 1770; Apr. 2, 1982, Pub.L. 97-164, Title I, § 125, 96 Stat. 36; Nov. 8, 1984, Pub.L. 98-620, Title IV, § 412, 98 Stat. 3362; Nov. 19, 1988, Pub.L. 100-702, Title V, § 501, 102 Stat. 4652; Oct. 29, 1992, Pub.L. 102-572, Title I, § 101, Title IX, §§ 902(b), 906(c), 106 Stat. 4506, 4516, 4518.)

Notes of Decisions (2861)

28 U.S.C.A. § 1292, 28 USCA § 1292

Current through P.L. 115-30. Also includes P.L. 115-32 and 115-34. Title 26 current through 115-34.

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| Title 28. Judiciary and Judicial Procedure (Refs & Annos) |
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| Part IV. Jurisdiction and Venue (Refs & Annos) |
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| Chapter 85. District Courts; Jurisdiction (Refs & Annos) |
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28 U.S.C.A. § 1331

§ 1331. Federal question

Currentness

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, Pub.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, Pub.L. 96-486, § 2(a), 94 Stat. 2369.)

28 U.S.C.A. § 1331, 28 USCA § 1331

Current through P.L. 115-30. Also includes P.L. 115-32 and 115-34. Title 26 current through 115-34.

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 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limitation Recognized by *In re Mid-Continent Electric, Inc.*, Bkrtcy.M.D.Fla., Apr. 11, 2002

United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1367

§ 1367. Supplemental jurisdiction

Currentness

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

§ 1367. Supplemental jurisdiction, 28 USCA § 1367

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

CREDIT(S)

(Added Pub.L. 101-650, Title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.)

28 U.S.C.A. § 1367, 28 USCA § 1367

Current through P.L. 115-30. Also includes P.L. 115-32 and 115-34. Title 26 current through 115-34.

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KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Limited on Constitutional Grounds by Porter v. Roosa, S.D. Ohio, Jan. 14, 2003

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United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 89. District Courts; Removal of Cases from State Courts (Refs & Annos)

28 U.S.C.A. § 1441

§ 1441. Removal of civil actions

Currentness

(a) **Generally.**--Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) **Removal based on diversity of citizenship.**--(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) **Joinder of Federal law claims and State law claims.**--(1) If a civil action includes--

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in

paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d) Actions against foreign States.--Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) Multiparty, multiform jurisdiction.--(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if--

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) **Derivative removal jurisdiction.**--The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 937; Oct. 21, 1976, Pub.L. 94-583, § 6, 90 Stat. 2898; June 19, 1986, Pub.L. 99-336, § 3(a), 100 Stat. 637; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1016(a), 102 Stat. 4669; Dec. 1, 1990, Pub.L. 101-650, Title III, § 312, 104 Stat. 5114; Dec. 9, 1991, Pub.L. 102-198, § 4, 105 Stat. 1623; Nov. 2, 2002, Pub.L. 107-273, Div. C, Title I, § 11020(b)(3), 116 Stat. 1827; Pub.L. 112-63, Title I, § 103(a), Dec. 7, 2011, 125 Stat. 759.)

28 U.S.C.A. § 1441, 28 USCA § 1441

Current through P.L. 115-30. Also includes P.L. 115-32 and 115-34. Title 26 current through 115-34.

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United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 89. District Courts; Removal of Cases from State Courts (Refs & Annos)

28 U.S.C.A. § 1446

§ 1446. Procedure for removal of civil actions

Currentness

(a) **Generally.**--A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) **Requirements; generally.**--(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; removal based on diversity of citizenship.--(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that--

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks--

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an 'other paper' under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) **Notice to adverse parties and State court.--**Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) **Counterclaim in 337 proceeding.--**With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

[(f) Redesignated (e)]

(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 939; May 24, 1949, c. 139, § 83, 63 Stat. 101; Sept. 29, 1965, Pub.L. 89-215, 79 Stat. 887; July 30, 1977, Pub.L. 95-78, § 3, 91 Stat. 321; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1016(b), 102 Stat. 4669; Dec. 9, 1991, Pub.L. 102-198, § 10(a), 105 Stat. 1626; Dec. 8, 1994, Pub.L. 103-465, Title III, § 321(b)(2), 108 Stat. 4946; Oct. 19, 1996, Pub.L. 104-317, Title VI, § 603, 110 Stat. 3857; Pub.L. 112-51, § 2(c), Nov. 9, 2011, 125 Stat. 545; Pub.L. 112-63, Title I, §§ 103(b), 104, Dec. 7, 2011, 125 Stat. 760, 762.)

Notes of Decisions (2231)

28 U.S.C.A. § 1446, 28 USCA § 1446

Current through P.L. 115-30. Also includes P.L. 115-32 and 115-34. Title 26 current through 115-34.

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§ 1447. Procedure after removal generally, 28 USCA § 1447

KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limitation Recognized by Flam v. Flam, 9th Cir.(Cal.), June 08, 2015

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 89. District Courts; Removal of Cases from State Courts (Refs & Annos)

28 U.S.C.A. § 1447

§ 1447. Procedure after removal generally

Effective: November 9, 2011

Currentness

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 939; May 24, 1949, c. 139, § 84, 63 Stat. 102; July 2, 1964, Pub.L. 88-352, Title IX, § 901, 78 Stat. 266; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1016(c), 102 Stat. 4670; Dec. 9, 1991, Pub.L. 102-198, § 10(b), 105 Stat. 1626; Oct. 1, 1996, Pub.L. 104-219, § 1, 110 Stat. 3022; Pub.L. 112-51, § 2(d), Nov. 9, 2011, 125 Stat. 546.)

Notes of Decisions (1589)

28 U.S.C.A. § 1447, 28 USCA § 1447

Current through P.L. 115-30. Also includes P.L. 115-32 and 115-34. Title 26 current through 115-34.

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