Winning The Removal Race: District Courts Put Limits On 'Snap Removal'

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In two recent decisions — *Brown v. Teva Pharmaceuticals* and *Doe v. Valley Forge Military Academy & College* — courts in the Eastern District of Pennsylvania put limits on the use of so-called "snap removal," a strategy allowing in-state defendants to remove suits from state to federal court before being served with the state court summons and complaint. Now, defendants looking to win the removal race must file a notice of removal with both the federal *and* state court before being served, or risk losing access to a federal forum.

The *Brown* and *Doe* Decisions

The forum defendant rule, 28 U.S.C. § 1441(b)(2), prevents in-state defendants from removing suits to federal court solely on the basis of diversity jurisdiction. In 2018, the Third Circuit limited the rule's scope, finding that the rule only takes effect once the in-state defendant has been "properly joined and served." *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147 (3d Cir. 2018). In Pennsylvania, New Jersey and Delaware, in-state defendants may now remove state actions to federal court before service of process is completed. These "snap removals" provide in-state defendants access to a federal forum — as long as they act quickly and remove the case before being served.

The *Encompass* court, however, did not clarify the procedural steps necessary for snap removal to take effect. Removal has always been a multistep process: The defendant must file a notice of removal in federal court within 30 days of receiving the plaintiff's initial pleading, 28 U.S.C. § 1446(b)(1), *and* it must also "promptly" provide notice of removal to all adverse parties and file a copy of the removal notice with the state court, 28 U.S.C. 1446(d). Given the necessary delay between filing a notice in federal court and filing a copy of the notice in state court, some defendants may notify the state court days after filing their notices of removal. This delay can be exacerbated when removing a case to a district court, such as the Eastern District of Pennsylvania, that requires notices of removal to be filed in person with the clerk's office and not e-filed. Even though a notice of removal must be filed within 30 days of service, courts in the Third Circuit required only that the notice be filed with the state court "promptly" to properly effectuate removal. Indeed, Third Circuit courts have held that a copy of the notice of removal filed in state court a few days or even weeks after a timely federal court filing meets the procedural requirements of 28 U.S.C. § 1446. *See Bajrami v. Reliance Standard Life Ins. Co.*, 334 F. Supp. 3d 659, 661 n.14 (E.D. Pa. 2018) (noting that in the Eastern District of Pennsylvania, "[c]ases have held that filing notice to the state court within a month after removal in federal court is deemed 'prompt,' as required by § 1446").

But in the snap removal context, filing "promptly" with the state court may no longer suffice. In *Brown* and *Doe*, the district courts, faced with motions to remand, needed to determine whether the defendants perfected their snap removals when they filed their notices of removal in federal court before being served, but failed to file copies of this notice in the state court until after service occurred.

The defendants argued that the procedural requirements for snap removal were satisfied when the defendants "initiate[d] removal" by filing in federal court. *Encompass*, 902 F.3d at 153. The *Brown* and *Doe* courts, on the other hand, found that merely initiating removal before service is not enough. Removal must instead be "effected," *i.e.*, a defendant must (1) file its notice of removal in federal court, (2) notify adverse parties, *and* (3) file a copy of its notice of removal in state court, all before being served. *Doe*, 2019 U.S. Dist. LEXIS 117633, at *9-10. Accordingly, to take advantage of the snap removal exception to the forum defendant rule, Pennsylvania defendants must complete all of these procedural steps before service to win the removal race.

Implications of *Doe* and *Brown* in the Snap Removal Context and Beyond

The *Brown* and *Doe* holdings present a challenge for in-state defendants seeking removal on diversity grounds. While the act of filing a notice of removal with the federal court may be done with relative speed, the necessary delay between accomplishing the initial filing and providing a copy of this filing to the state court means that some defendants may be unable to take advantage of snap removal before being served. In-state defendants anticipating suit by out-of-state plaintiffs should be prepared to move quickly upon learning that a state court action has been filed if they wish to proceed in a federal forum.

Further, while it remains unclear what effect the *Brown* and *Doe* holdings may have outside the snap removal context, the opinions do offer an apt reminder that defendants should attempt to satisfy all procedural requirements of section 1446(d) within 30 days of service to avoid remand motions based on alleged untimeliness.

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