2 West's Fed. Forms, District Courts-Civil § 2:7 (5th ed.)

West's Federal Forms | May 2023 Update

District Courts-Civil
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Chapter 2. Removal of Cases from State Court to Federal District Court

II. Overview

§ 2:7. Procedure for removal

Only defendants, not plaintiffs or third-party defendants[1] brought into the action by the original defendant, may remove a case.[2] Federal law determines who is a plaintiff and who is a defendant.[3] Ordinarily the notice of removal must be signed by all of the defendants over whom the state court has acquired jurisdiction.[4] To obtain removal from a state court, the action must have been within the jurisdiction of the state court.[5] Claim preclusion by reason of a prior judgment is a defensive plea that provides no ground for removal of state-law claims based on court's federal-question jurisdiction.[6] 28 U.S.C.A. § 1451 provides that a state includes the District of Columbia and the Superior Court of that district.

In *Home Depot U.S.A., Inc. v. Jackson*,[6.50] held that the general removal statute (28 U.S.C.A. § 1441(a)) does not permit removal by any counterclaim defendant, including parties brought into a lawsuit for the first time by the counterclaim. The Court explained that a district court, when determining whether it has original jurisdiction over a civil action, should evaluate whether that action could have been brought originally in federal court. It said that this requires a district court to evaluate whether the plaintiff could have filed its operative complaint in federal court, either because it raises claims arising under federal law or because it falls within the court's diversity jurisdiction. It held that a counterclaim is irrelevant to whether the district court had "original jurisdiction" over the civil action.

The Court also held that a third-party counterclaim defendant is not a "defendant" who can remove under the general removal statute and that the Class Action Fairness Act's removal provision does not permit a third-party defendant to remove.[6.70] The court explained that the Class Action Fairness Act's removal provision was intended only to alter certain restrictions on removal, not expand the class of parties who can remove a class action.

The notice for the removal of any civil action or proceeding must 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 the action or proceeding is based, or within 30 days after the service of the 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.[7] If a case involves a single defendant, the operation of 28 U.S.C.A. § 1446(b) is straightforward—the defendant must file the notice of removal within 30 days of service.

When a case involves multiple defendants, the operation of 28 U.S.C.A. § 1446(b) is less clear, because, unlike 28 U.S.C.A. § 1446(a), 28 U.S.C.A. § 1446(b) does not speak in terms of multiple defendants. If all the defendants are served on the same day, the notice of removal must be filed within 30 days of the date of service, and all the defendants must consent to and join the notice of removal.[8] However, if the defendants are served on different days, two questions arise. First, must the notice of removal be filed within 30 days of service on the first-served defendant or can the notice be filed within 30 days of service on

the last-served defendant? Second, if the notice of removal must be filed within 30 days of service on the first-served defendant, do all of the defendants have to join the notice within 30 days of service on the first-served defendant or can each defendant join within 30 days of the date they are served?

In *Encompass Insurance Co. v. Stone Mansion Restaurant Inc.*,[8.50] the Third Circuit approved what has been called a "snap removal." In that case an in-state defendant filed a notice for removal in a diversity case before being served. The Third Circuit held the forum defendant rule, providing that a civil action otherwise removable solely on the basis of diversity jurisdiction 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, does not preclude an in-state defendant to use pre-service machinations to remove an action that it otherwise could not.

The first circuit court to address the defendants-served-on-different-days issue was the Fifth Circuit in *Brown v. Demco, Inc.*[9] The *Brown* court observed that

> [t]he general rule … is that "[i]f the first served defendant abstains from seeking removal or does not effect a timely removal, subsequently served defendants cannot remove … due to the rule of unanimity among defendants which is required for removal."

The *Brown* court rejected the notion that the "general rule" was unfair because it prevented later-served defendants from persuading earlier-served defendants to remove the case:

Two years later, in *Getty Oil Corp. v. Insurance Co. of North America*,[10] the Fifth Circuit addressed the question whether later-served defendants must join the notice of removal within the first-served defendant's 30-day window. The court answered the question in the affirmative, adopting what is commonly referred to as the "First-Served Defendant Rule." The First-Served Defendant Rule requires a notice of removal to be filed within 30 days of service on the first-served defendant and requires all defendants to join the notice of removal within the first-served defendant's 30-day window.

Four years after *Getty Oil*, the Fourth Circuit addressed the two questions raised by the defendants-served-on-different-days dilemma and adopted what is commonly referred to as the "McKinney Intermediate Rule."[11] Like the First-Served Defendant Rule, the McKinney Intermediate Rule requires a notice of removal to be filed within the first-served defendant's 30-day window, but gives later-served defendants 30 days from the date they were served to join the notice of removal.

The Fourth Circuit in *McKinney* addressed both of *Getty Oil*'s holdings concerning the timeliness of removal. With regard to *Getty Oil*'s first holding, the Fourth Circuit stated that the first-served defendant clearly must petition for removal within 30 days. With regard to *Getty Oil*'s second holding, that a later-served defendant must join the notice of removal within 30 days of the date of service on the first-served defendant, the Fourth Circuit rejected that holding.

In doing so, the Fourth Circuit made three observations. First, it observed that nothing in 28 U.S.C.A. § 1446(b) implied in any way that later served defendants have less than 30 days in which to act. Second, it observed that it would be inequitable to require a later-served defendant to join a timely filed notice of removal within 30 days of the date of service on the first-served defendant. Third, it observed that to require a later-served defendant to join a timely filed notice of removal within 30 days of the date of service on the first-served defendant would necessitate adding the term "first" before "defendant" in 28 U.S.C.A. § 1446(b).

The Fourth Circuit then turned to plaintiffs' argument that they should be entitled to know within a prescribed period of time whether the case will proceed in state or federal court. In rejecting this argument, the court first noted that, if the plaintiffs wanted to know in which court they will be at the earliest possible date, they need only to make sure that all defendants are

served at about the same time. Second, it noted that the plaintiffs' entitlement was no greater than the defendant's right to remove a case that could be heard in federal court.

Since the Fourth Circuit's decision in *McKinney*, four other circuits have addressed the defendants-served-on-different days dilemma and have rejected the First-Served Defendant Rule and the McKinney Intermediate Rule in favor of what is commonly referred to as the "Last-Served Defendant Rule."[12] The Last-Served Defendant Rule permits each defendant, upon formal service of process, 30 days to file a notice of removal pursuant to 28 U.S.C.A. § 1446(b), and earlier-served defendants may choose to join in a later-served defendant's motion or not.[13]

Each defendant has 30 days after receipt by or service on that defendant of the initial pleading or summons described in 28 U.S.C.A. § 1446(b)(1) to file the notice of removal.[14] The Federal Courts Jurisdiction and Venue Clarification Act of 2011,[15] effective January 6, 2012, resolves a split among the courts of appeals and now provides that each newly served defendant has 30 days from service in which to file a notice of removal.[16] Any earlier-served defendant may consent to the removal even though that earlier served defendant did not previously initiate or consent to removal.[17]

A proceeding pursuant to a state rule permitting a party to obtain discovery before an action is commenced by filing a verified petition in circuit court is not a "civil action" within the meaning of removal statutes and thus is not subject to removal.[18]

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 the 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.[19] A case may not be removed under 28 U.S.C.A. § 1446(b)(3) on the basis of jurisdiction conferred by 28 U.S.C.A. § 1332 more than one year after commencement of the action, unless the district court finds the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.[20]

If removal of a civil action is sought on the basis of jurisdiction conferred by § 1332(a), the sum demanded in good faith in the initial pleading is deemed to be the amount in controversy.[21] However, the notice of removal may assert the amount in controversy if the initial pleading seeks nonmonetary relief, or the pleading seeks 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.[22] Removal of the action is proper on the basis of an amount in controversy asserted under § 1446(c)(2)(A) if the court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in § 1332(a).[23]

If the case as filed is not removable simply because of the amount in controversy, discovery or other information in the record in the state-court proceeding can trigger removal.[24] The information is considered to be a "paper" that will trigger the 30-day removal clock.[25]

If the notice of removal is filed more than one 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, such a finding is deemed "bad faith" for purposes of extending the one-year limit under § 1446(c)(1).[26]

Since the adoption of the Class Action Fairness Act (amending 28 U.S.C.A. § 1332(d) to confer federal jurisdiction over class actions involving at least 100 members and over $5 million in controversy when minimal diversity is met), courts have adopted at least three distinct positions on the issue of commencement-by-amendment for purposes of removal under the Act. Some insist that a "civil action" can "commence" only once and thus, take the position that, if an action was commenced before the CAFA's effective date, no post-CAFA amendment of the pleadings can bring the Act into play.[27]

Most courts, however, hold that the addition of a new claim sufficiently distinct from prior pleadings may commence a new action removable under CAFA by the affected parties. These courts generally agree that, whether an amendment is distinct enough to give rise to a new commencement date is properly gauged by the forum state's law governing the relation-back of pleading amendment. This consensus splits into two opposing views regarding the treatment of amendments that add new defendants to a case. Under one view, the relation-back analysis controls the commencement question for all amendments adding new defendants.[28] Under the other view, the relation-back analysis controls for all amendments except those adding defendants, which are categorically treated as commencing a new case as to the added defendants.[29]

The "other paper" triggering the 30-day period for removal includes correspondence between the parties,[30] deposition responses,[31] answers to interrogatories,[32] and a postclaim letter containing a settlement offer.[33] Notices of removal based on an amended pleading, motion, or other paper from which it may first be ascertained that the action is or has become removable, the information supporting removal in the copy of the amended pleading or paper must be unequivocally clear and certain to start the 30-day period running.[34]

A number of problems can arise with respect to these time limits. For example, the date for filing the Notice of Removal does not run from the date of service of the summons in state court when, in accordance with state practice, the summons is served without the complaint and the complaint is filed later. In such case, the time for filing a Notice of Removal begins when the complaint is filed. Service on a statutory agent of a motorist is not sufficient to start the filing period of Removal. The agent must be an agent in fact.[35]

Upon the filing of the Notice of Removal, the defendant or defendants must promptly give written notice of the Notice of Removal to all adverse parties.[36] Delay in giving notice is not fatal. On the other hand, undue delay or even a short delay may not be countenanced.[37] No special form is prescribed for the notice. However, the notice must be in writing.[38] Section 1446(d) does not specify by what method the notice is to be served. Actual delivery of the written notice to the adverse party, with written acknowledgment of the service on a copy of the notice by the adverse party is appropriate.[39] Acceptance of service must be by the party served; i.e., the adverse party or parties, or their attorney of record in the state court. Any of the methods prescribed by Rule 5(b), including mailing to the adverse party's attorney or leaving it at the attorney's office with a person in charge are sufficient.[40]

In addition to giving notice to the adverse parties, the defendant must file a copy of the Notice of Removal with the clerk of the state court.[41] This effects "the removal and the State court shall proceed no further unless and until the case is remanded."[42] No order or other action by the state or federal district court is required and all further proceedings in the cause are had in the district court to which the action is removed.[43] The Federal Rules of Civil Procedure are applicable to removed actions and govern all procedure after removal.[44]

The right to a jury trial in a case removed to federal court may be waived unless a demand for a jury trial is served in a timely manner.[45] If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury under Rule 38 of the Federal Rules of Civil Procedure will be accorded it, if the party's demand for a jury trial is served within 10 days after the Notice of Removal is filed, if the party demanding a jury trial the removing defendant, or, if the party demanding a jury trial is not the removing defendant, within 10 days after service on the party of the notice of filing the Notice of Removal.

Rule 81(c) provides, in pertinent part, as follows:

> A party who, prior to removal, has made an express demand for trial by jury in accordance with state law, need not make a demand after removal. If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury,

> they need not make demands after removal unless the court directs that they do so within a specified time if they desire to claim trial by jury. The court may make this direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver by him of trial by jury.

The note of the Advisory Committee on Civil Rules accompanying this rule indicates that most of the cases had held that a party who has made a proper express demand for jury trial in the state court was not required to renew the demand after removal of the action. There was some authority to the contrary. Rule 81(c) adopts the preponderant view.

In order to avoid unintended waivers of jury trial, Rule 81(c) provides, that, where by state law applicable in the court from which the case is removed, a party is entitled to a jury trial without making an express demand, the party is not required to make a demand after removal. However, the district court, for calendar or other purposes, may on its own motion direct the parties to state whether they demand a jury. The court must make such a direction upon the request of any party.

Upon removal, previous proceedings and rulings of the state court are preserved in the federal court after removal until set aside.[46] The removal of a cause gives the federal court jurisdiction of the case as it was when the state court lost jurisdiction; and if the state court has seized the attached property and if the state statute and constitutional due process standards had been complied with as to service of notice to the defendant, so that the state court could have rendered a judgment up to the amount of the property attached had the cause not been removed, the federal court may proceed to judgment.[47]

After removal, the district court may require the removing party to file with the clerk of the district court copies of all records and proceedings in the state court.[48] The defendant should make a request to the clerk of the state court for certified copies of such records and proceedings, tender appropriate fees, and upon compliance with the request file the records and proceedings with the clerk of the district court.[49]

Upon the refusal or neglect of the clerk of the state court to deliver certified copies of the record, the removing party may resort to either of two statutory remedies: (1) petition the federal court, to which the cause is removable, for a writ of certiorari commanding the state court to make return of the record in the cause;[50] or (2) make an affidavit that the state court clerk has refused or neglected, upon demand and payment or tender of the legal fees, to deliver certified copies of the record and proceedings; and move the federal court, with such supporting affidavit, to direct that the record be supplied by affidavit or otherwise.[51] The writ should be served on the state court or its clerk.

Footnotes

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1 See Deutsche Bank National Trust Co. v. Tyner, 233 F.R.D. 460, 464–465 (D.S.C. 2006) (third-party defendant could not remove case based on diversity jurisdiction).

See Home Depot U. S. A., Inc. v. Jackson, 139 S. Ct. 1743, 204 L. Ed. 2d 34 (2019) (general removal statute does not permit removal based on counterclaims at all, as counterclaim is irrelevant to whether district court had "original jurisdiction" over civil action).

2 28 U.S.C.A. § 1446(a). See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3731.

3 Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3731.

4 Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3731.

But see 28 U.S.C.A. § 1441(e)(1) providing that "a defendant … may remove … if the action could have been brought … under section 1369 [Multiparty, Multiforum Trial Jurisdiction Act]"; and Pettitt v. Boeing Co., 606 F.3d 340 (7th Cir. 2010) (removal of plaintiffs' wrongful-death and survival action against aircraft manufacturer and other defendants to federal court under MMTJA did not require unanimous consent of all defendants).

See Bailey, Comment, Giving State Courts the Ol' Slip: Should a Defendant Be Allowed to Remove an Otherwise Irremovable case to Federal Court Solely Because Removal Was Made Before Any Defendant Is Served?, 42 Tex. Tech. L. Rev. 181 (Fall 2009).

5 See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3721.

6 Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 118 S. Ct. 921, 139 L. Ed. 2d 912 (1998).

6.50 Home Depot U. S. A., Inc. v. Jackson, 139 S. Ct. 1743, 204 L. Ed. 2d 34 (2019).

6.70 See 28 U.S.C.A. § 1453(b).

7 28 U.S.C.A. § 1446(b). See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 119 S. Ct. 1322, 143 L. Ed. 2d 448, 43 Fed. R. Serv. 3d 1 (1999) (30-day removal period begins to run when defendant is formally served). See also Oviedo v. Hallbauer, 655 F.3d 419, 423 (5th Cir. 2011) (removal is not possible after final judgment and time for direct appellate review has run).

See Morgan v. Huntington Ingalls, Incorporated, 879 F.3d 602 (5th Cir. 2018) (period of 30 days for employer to remove employee's action, alleging that he was exposed to asbestos during course of his employment, began upon employer's receipt of transcript of deposition testimony that alerted employer that case was removable under federal officer removal statute, rather than date of testimony itself).

See Railey v. Sunset Food Mart, Inc., 2021 WL 488222 (7th Cir. 2021) (plaintiff may trigger a removal clock and protect itself against a defendant's strategic maneuvering, by affirmatively and unambiguously disclosing facts establishing federal jurisdiction in an initial pleading or subsequent litigation documents); Dietrich v. Boeing Company, 14 F.4th 1089 (9th Cir. 2021) (aircraft manufacturer's 30-day period to file notice of removal pursuant to federal officer removal statute began to run when wife, who was diagnosed with malignant pleural mesothelioma, served her amended responses to manufacturer's discovery requests, in action by wife alleging that her husband and father worked with asbestos-containing products, resulting in her own exposure to asbestos when she washed their clothes, rode in their cars, or cleaned the house; responses clearly stated that wife was exposed to asbestos through her husband's exposure to asbestos-containing components of manufacturer's aircraft during husband's time in United States Marine Corps, and all prior information was ambiguous or misleading as to whether wife's claims were related to husband's military service).

See Stevenson, Removal Clock Expired? Maybe Not, Litigation News, Winter 2022, at 18.

8 See Creasy v. Coleman Furniture Corp., 763 F.2d 656, 660 (4th Cir. 1985) ("all of the defendants must agree to the removal of the state court action"); Abrego Abrego v. The Dow Chemical Co., 443 F.3d 676, 681 (9th Cir. 2006) (all served defendants must join in the notice of removal); Gossmeyer v. McDonald, 128 F.3d 481, 489 (7th Cir. 1997) (same).

See Rock Hemp Corp. v. Dunn, 51 F.4th 693, 113 Fed. R. Serv. 3d 1897 (7th Cir. 2022) (when the clock for filing notice of removal starts is not a fact-intensive inquiry about what the defendant subjectively knew or should have discovered through independent investigation; rather, the clock commences only when the defendant receives a post-complaint pleading or other paper that affirmatively and unambiguously specifies a damages amount sufficient to satisfy the federal jurisdictional minimums).

8.50 Encompass Insurance Company v. Stone Mansion Restaurant Incorporated, 902 F.3d 147 (3d Cir. 2018).

9 Brown v. Demco, Inc., 792 F.2d 478 (5th Cir. 1986).

10 Getty Oil Corp., a Div. of Texaco, Inc. v. Insurance Co. of North America, 841 F.2d 1254 (5th Cir. 1988).

11 McKinney v. Board of Trustees of Mayland Community College, 955 F.2d 924, 72 Ed. Law Rep. 767 (4th Cir. 1992). Barbour v. Intern. Union, 640 F.3d 599 (4th Cir. 2011).

12 See Delalla v. Hanover Ins., 660 F.3d 180 (3d Cir. 2011); Destfino v. Reiswig, 630 F.3d 952 (9th Cir. 2011); Bailey v. Janssen Pharmaceutica, Inc., 536 F.3d 1202, 1209 (11th Cir. 2008), for additional opinion, see, 288 Fed. Appx. 597 (11th Cir. 2008); Marano Enterprises of Kansas v. Z-Teca Restaurants, L.P., 254 F.3d 753, 757 (8th Cir. 2001); Brierly v. Alusuisse Flexible Packaging, Inc., 184 F.3d 527, 533, 1999 FED App. 0214A (6th Cir. 1999). Cf. Mayo v. Board of Educ. of Prince George's County, 713 F.3d 735, 742–43, 292 Ed. Law Rep. 71 (4th Cir. 2013), cert. denied, 134 S. Ct. 901, 187 L. Ed. 2d 777 (2014) (as matter of first impression, each defendant was not required to sign the notice of removal to satisfy the unanimous consent requirement for removal; a notice of removal signed and filed by an attorney for one defendant representing unambiguously that the other defendants consent to the removal satisfies the requirement of unanimous consent).

13 Bailey v. Janssen Pharmaceutica, Inc., 536 F.3d 1202 (11th Cir. 2008), for additional opinion, see, 288 Fed. Appx. 597 (11th Cir. 2008).

14 28 U.S.C.A. § 1446(b)(1).

15 Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 764.

16 28 U.S.C.A. § 1446(b)(2)(B).

17 28 U.S.C.A. § 1446(b)(2)(B).

18 Matter of Hinote, 179 F.R.D. 335 (S.D. Ala. 1998).

19 28 U.S.C.A. § 1446(b)(3).

See Chan Healthcare Group, PS v. Liberty Mutual Fire Insurance Co., 844 F.3d 1133 (9th Cir. 2017) (healthcare provider's reply brief, in Washington state court putative class action alleging that automobile insurer improperly reduced reimbursements for health services, was first paper that provided basis for removal, thereby triggering 30-day period for insurer to remove case; provider's complaint only presented claims under Washington statutes, reply brief was first time that provider referenced federal due process claim in its action, and although provider had asserted due process claim in similar action, insurer was not defendant in that action).

20 28 U.S.C.A. § 1446(c)(1).

See Music v. Arrowood Indem. Co., 632 F.3d 284, 288 (6th Cir. 2011) (statutory requirement that action be removed from state court on the basis of diversity within one year of commencement was procedural, not jurisdictional, and was therefore waived by insured when it failed to timely move for remand); Ariel Land Owners, Inc. v. Dring, 351 F.3d 611, 616 (3d Cir. 2003) (same); In re Uniroyal Goodrich Tire Co., 104 F.3d 322, 324 (11th Cir. 1997) (same); Barnes v. Westinghouse Elec. Corp., 962 F.2d 513, 516 (5th Cir.

1992). Cf. Caterpillar Inc. v. Lewis, 519 U.S. 61, 75 n.13, 117 S. Ct. 467, 136 L. Ed. 2d 437 (1996) ("[A] nonjurisdictional argument not raised in a respondent's brief in opposition to a petition for writ of certiorari may be deemed waived.").

21 28 U.S.C.A. § 1446(c)(2).

22 28 U.S.C.A. § 1446(c)(2)(A).

23 28 U.S.C.A. § 1446(c)(2)(B).

24 28 U.S.C.A. § 1446(c)(3)(A).

25 28 U.S.C.A. § 1446(c)(3)(A).

26 28 U.S.C.A. § 1446(c)(3)(B).

27 See Comes v. Microsoft Corp., 403 F. Supp. 2d 897, 903 (S.D. Iowa 2005); Weekley v. Guidant Corp., 392 F. Supp. 2d 1066, 1067–1068 (E.D. Ark. 2005).

28 See Prime Care of Northeast Kan., LLC v. Humana Ins. Co., 447 F.3d 1284, 1286 (10th Cir. 2006); Plubell v. Merck & Co., Inc., 434 F.3d 1070, 1071–1072 (8th Cir. 2006).

29 See Braud v. Transport Service Co. of Illinois, 445 F.3d 801, 804–809 (5th Cir. 2006); Schillinger v. Union Pacific R. Co., 425 F.3d 330, 333 (7th Cir. 2005).

30 Chapman v. Powermatic, Inc., 969 F.2d 160 (5th Cir. 1992).

31 Huffman v. Saul Holdings Ltd. Partnership, 194 F.3d 1072 (10th Cir. 1999).

32 Akin v. Ashland Chemical Co., 156 F.3d 1030 (10th Cir. 1998).

33 Addo v. Globe Life and Acc. Ins. Co., 230 F.3d 759 (5th Cir. 2000).

34 Bosky v. Kroger Texas, LP, 288 F.3d 208, 211 (5th Cir. 2002), relying on DeBry v. Transamerica Corp., 601 F.2d 480, 489 (10th Cir. 1979).

35 These and other problems are discussed in Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3732.

36 28 U.S.C.A. § 1446(d). See generally Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3736.

37 See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3736.

38 28 U.S.C.A. § 1446(d).

39 See Wright and Miller's Federal Practice and Procedure, Civil § 1150.

40 See generally Wright and Miller's Federal Practice and Procedure, Civil §§ 1141 to 1153.

41 28 U.S.C.A. § 1446(d).

42 28 U.S.C.A. § 1446(d).

43 See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3737.

44 Rule 81(c) ("These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal."). See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3738.

45 See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3738.

46 28 U.S.C.A. § 1450. See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3738.

47 See Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3738; Wright and Miller's Federal Practice and Procedure, Civil § 1071.

48 See generally Wright and Miller's Federal Practice and Procedure, Jurisdiction and Related Matters § 3738.

49 28 U.S.C.A. § 1447(b).

50 28 U.S.C.A. § 1447(b).

51 28 U.S.C.A. § 1449.

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