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

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 28, U.S.C., 1940 ed., §§ 71, 114 (Mar. 3, 1911, c. 231, §§ 28, 53, 36 Stat. 1094, 1101; Jan. 20, 1914, c. 11, 38 Stat. 278; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54).

Section consolidates **removal** provisions of sections 71 and 114 of Title 28, U.S.C., 1940 ed., and is intended to resolve ambiguities and conflicts of decisions.

Phrases such as "in suits of a civil nature, at law or in equity," the words "case," "cause," "suit," and the like have been omitted and the words "civil action" substituted in harmony with Rules 2 and 81(c) of the Federal Rules of Civil Procedure.

Ambiguous phrases such as "the District Court of the United States for the proper district" have been clarified by the substitution of the phrase "the district and division embracing the place where such action is pending." (See *General Investment Co. v. Lake Shore & M.S. Ry. Co.,* 1922, 43 S.Ct. 107, 112, 260 U.S. 261, 67 L.Ed. 244 and cases cited therein.)

All the provisions with reference to **removal** of controversies between citizens of different States because of inability, from prejudice or local influence, to obtain justice, have been discarded. These provisions, born of the bitter sectional feelings engendered by the Civil War and the Reconstruction period, have no place in the jurisprudence of a nation since united by three wars against foreign powers. Indeed, the practice of **removal** for prejudice or local influence has not been employed much in recent years.

Subsection (c) has been substituted for the provision in section 71 of Title 28, U.S.C., 1940 ed., "and when in any suit mentioned in this section, there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may **remove** said suit into the district court of the United States."

This quoted language has occasioned much confusion. The courts have attempted to distinguish between separate and separable controversies, a distinction which is sound in theory but illusory in substance. (See 41 Harv.L.Rev. 1048; 35 Ill.L.Rev. 576.)

Subsection (c) permits the **removal** of a separate cause of action but not of a separable controversy unless it constitutes a separate and independent claim or cause of action within the original jurisdiction of United States District Courts. In this respect it will somewhat decrease the volume of Federal litigation.

Rules 18, 20, and 23 of the Federal Rules of Civil Procedure permit the most liberal joinder of parties, claims, and remedies in civil actions. Therefore there will be no procedural difficulty occasioned by the **removal** of the entire action. Conversely, if the court so desires, it may remand to the State court all nonremovable matters.

The provisions of section 71 of Title 28, U.S.C., 1940 ed., with respect to **removal** of actions under the Federal Employer's Liability Act (U.S.C., 1940 ed., Title 45, Railroads, §§ 51-60) and actions against a carrier for loss, damage, or delay to shipments under section 20 of Title 49, U.S.C., 1940 ed., Transportation, are incorporated in section 1445 of this title.

1976 Acts. House Report No. 94-1487, see 1976 U.S. Code Cong. and Adm. News, p. 6604.

1986 Acts. House Report No. 99-423, see 1986 U.S. Code Cong. and Adm. News, p. 1545.

1988 Acts. House Report No. 100-889, see 1988 U.S. Code Cong. and Adm. News, p. 5982.

1990 Acts. Senate Report No. 101-416, House Report Nos. 101-123, 101-512, 101-514, 101-734, 101-735, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 6802.

1991 Acts. House Report No. 102-322, see 1991 U.S. Code Cong. and Adm. News, p. 1303.

2002 Acts. House Conference Report No. 107-685 and Statement by President, see 2002 U.S. Code Cong. and Adm. News, p. 1120.

References in Text

Section 1407(j) of Title 28, referred to in subsec. (e)(2), does not exist.

Amendments

2011 Amendments. Section Heading. Pub.L. 112-63, § 103(a)(1), rewrote the section heading, which formerly read: "Actions **removable** generally".

Subsec. (a). Pub.L. 112-63, § 103(a)(2)(A), struck out "**(a)** Except" and inserted "**(a) Generally.**--Except".

Subsec. (a). Pub.L. 112-63, § 103(a)(2)(B), struck out the last sentence, which formerly read: "For purposes of **removal** under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded."

Subsec. (b). Pub.L. 112-63, § 103(a)(3), rewrote subsec. (b), which formerly read: "**(b)** Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be **removable** without regard to the citizenship or residence of the parties. Any other such action shall be **removable** only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

Subsec. (c). Pub.L. 112-63, § 103(a)(4), rewrote subsec. (c), which formerly read: "**(c)** Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise

non-**removable** claims or causes of action, the entire case may be **removed** and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates."

Subsec. (d). Pub.L. 112-63, § 103(a)(5), struck out "**(d)** Any" and inserted "**(d) Actions against foreign States.**--Any".

Subsec. (e)(1). Pub.L. 112-63, § 103, struck out "**(e)(1)** Notwithstanding" and inserted "**(e) Multiparty, multiforum jurisdiction.--(1)** Notwithstanding".

Subsec. (f). Pub.L. 112-63, § 103(a)(7), struck out "**(f)** The court" and inserted "**(f) Derivative removal jurisdiction.**--The court".

2002 Amendments. Subsec. (e). Pub.L. 107-273, § 11020(b)(3), redesignated former subsec. (e) as (f) and inserted a new subsec. (e).

Subsec. (f). Pub.L. 107-273, § 11020(b)(3)(A), redesignated former subsec. (e) as (f) and therein substituted "The court to which a civil action is **removed** under this section" for "The court to which such civil action is **removed**".

1991 Amendments. Subsec. (c). Pub.L. 102-198 substituted "may remand" for "may may remand" and struck out comma following "title".

1990 Amendments. Subsec. (c). Pub.L. 101-650, § 312 substituted "within the jurisdiction conferred by section 1331 of this title" for ", which would be **removable** if sued upon alone" and "may remand all matters in which State law predominates" for "remand all matters not otherwise within its original jurisdiction".

1988 Amendments. Subsec. (a). Pub.L. 100-702 added the sentence "For purposes of **removal** under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded."

1986 Amendments. Subsec. (e). Pub.L. 99-336 added subsec. (e).

1976 Amendments. Subsec. (d). Pub.L. 94-583 added subsec. (d).

Effective and Applicability Provisions

2011 Acts. Subject to certain conditions, amendments made by Title I of Pub.L. 112-63, shall take effect upon the expiration of the 30-day period beginning on Dec. 7, 2011, and shall apply to any action or prosecution commenced on or after such effective date, see Pub.L. 112-63, § 105(d), set out as a note under 28 U.S.C.A. § 1332.

2002 Acts. Amendments by section 11020(b) of Pub.L. 107-273 shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after Nov. 2, 2002, see section 11020(c) of Pub.L. 107-273, set out as a note under 28 U.S.C.A. § 1369.

1986 Acts. Pub.L. 99-336, § 3(b), June 19, 1986, 100 Stat. 637, provided that: "The amendment made by this section [amending this section] shall apply with respect to claims in civil actions commenced in State courts on or after the date of the enactment of this section [June 19, 1986]."

1976 Acts. Amendment by Pub.L. 94-583 effective 90 days after Oct. 21, 1976, see section 8 of Pub.L. 94-583, set out as a note under 28 U.S.C.A. § 1602.

CROSS REFERENCES

Asian Development Bank, **removal** of actions against, see 22 USCA § 285f.
Federal facilities pollution control, **removal** of actions against, see 33 USCA § 1323.
Federal Reserve banks and banking transactions, **removal** of actions involving, see 12 USCA § 632.
Inter-American Development Bank, **removal** of actions against, see 22 USCA § 283f.
International Finance Corporation, **removal** of actions against, see 22 USCA § 282f.
International Monetary Fund and International Bank for Reconstruction and Development, **removal** of actions against, see 22 USCA § 286g.
Securities Act, cases not **removable**, see 15 USCA § 77v.

LAW REVIEW COMMENTARIES

Another choice of forum, another choice of law: Consensual adjudicatory procedure in **federal court**. Linda S. Mullenix, 57 Fordham L.Rev. 291 (1988).
Basic **removal** practice and procedure. Robert F. Daley Jr., 6 S.C.Law. 25 (Mar./Apr.1995).
Characterizing federal claims: Preemption, **removal**, and the arising-under jurisdiction of the **federal courts**. Mary P. Twitchell, 54 Geo.Wash.L.Rev. 812 (1986).
Forum selection clauses in **federal courts**: Limitations on enforcement after Stewart and Carnival Cruise. Walter W. Heiser, 45 Fla.L.Rev. 553 (1993).
Post **removal** changes in the party structure of diversity cases: The old law, the new law, and Rule 19. Joan M. Steinman, 38 U.Kan.L.Rev. 863 (1990).
Removal, remand, and review in pendent claim and pendent party cases. Joan Steinman, 41 Vand.L.Rev. 923.
Removal of claims related to bankruptcy cases: What is a "claim or cause of action"? S. Elizabeth Gibson, 34 UCLA L.Rev. 1 (1986).
Removing the bias against **removal**. Scott R. Haiber, 53 Cath. U. L. Rev. 609 (2004).
Riotous uncertainty: A quarrel with the "commentators' rule" against section 1441(c) **removal** for counterclaim, cross-claim, and third-party defendants. Michael C. Massengale 75 Texas L.R. 659 (1997).
Snap **removal**: Concept; cause: cacophony; and cure. Jeffrey W. Stempel, Thomas O. Main & David McClure, 72 Baylor L. Rev. 423 (2020).
Supplemental jurisdiction in § 1441 **removed** cases: An unsurveyed frontier of Congress' handiwork. Joan Steinman, 35 Ariz.L.Rev. 305 (1993).

RESEARCH REFERENCES

ALR Library

35 American Law Reports, Federal 3rd Series 10, Waiver of Right to **Remove** Action to Federal District Court by Participation in State Court Proceeding.
45 American Law Reports, Federal 2nd Series 407, Jurisdiction of **Federal Courts** Based Upon Diversity of Citizenship Under 28 U.S.C.A. § 1332--United States Supreme Court Cases.
1 American Law Reports, Federal 395, Jurisdiction of **Federal Court**, Based on Diversity of Citizenship, of Representative's Action Under Death Statute of Forum.
2 American Law Reports, Federal 760, Status, in **Federal Court**, of Judgment or Order Rendered by State Court Before **Removal** of Case.
4 American Law Reports, Federal 236, Right of Out-Of-State Property Owner to Commence In, or **Remove** To, **Federal Court** Action Involving Taking of Property by State, Local Government, or Agency Thereof.
7 American Law Reports, Federal 110, Jurisdiction of **Federal Court**, Based on Diversity of Citizenship, of Representative's Action Under Foreign Death Statute.

8 American Law Reports, Federal 708, Right of Third-Party Defendant to **Removal** of Action from State to **Federal Court** Under 28 U.S.C.A. § 1441.
8 American Law Reports, Federal 845, Validity and Effect of Plaintiff's Assignment of Claim or Part Thereof to Prevent **Removal** of Action from State Court to Federal District Court on Ground of Diversity of Citizenship.
9 American Law Reports, Federal 866, Construction and Application of 28 U.S.C.A. § 1448, Dealing With Completion of or New Process After **Removal** of Case from State Court to Federal District Court.
10 American Law Reports, Federal 919, **Removal** from State Court to Federal District Court of Action for Wages Under § 16(B) of Fair Labor Standards Act (29 U.S.C.A. § 216(B)).
12 American Law Reports, Federal 429, Amending Petition for **Removal** of Civil Action from State to **Federal Court** on Grounds of Diversity of Citizenship Where Petition Contains Insufficient Allegations as to Corporate Party.
18 American Law Reports, Federal 126, What Constitutes Ancillary, Incidental, or Auxiliary Cause of Action, So as to Preclude Its **Removal** from State to **Federal Court**.
19 American Law Reports, Federal 709, State or Federal Law as Governing Applicability of Doctrine of Res Judicata or Collateral Estoppel in **Federal Court** Action.
28 American Law Reports, Federal 488, Civil Actions **Removable** from State Court to Federal District Court Under 28 U.S.C.A. § 1443.
38 American Law Reports, Federal 824, Effect, on Jurisdiction of State Court, of 28 U.S.C.A. § 1446(E), Relating to **Removal** of Civil Case to **Federal Court**.
41 American Law Reports, Federal 288, **Removal** From, or Remand To, State Court in Federal Tort Claims Act Proceeding Involving Motor Vehicle Driver, Under 28 U.S.C.A. § 2679(D).
48 American Law Reports, Federal 738, What is a "State Court" for Purposes of 28 U.S.C.A. § 1441(A), Providing for **Removal** of Civil Actions Generally.
54 American Law Reports, Federal 442, When is Act "Under Color of Such Office" Within Meaning of 28 U.S.C.A. § 1442(A)(1), Providing for **Removal** from State Court to **Federal Court** of Civil Action or Criminal Prosecution Against Officer of United States for Any Act Under Color of Such Office.
58 American Law Reports, Federal 458, What is "A Separate and Independent Claim or Cause of Action" Within 28 U.S.C.A. § 1441(C) Which Permits Nonresident Codefendant to **Remove** Case from State to **Federal Court**.
61 American Law Reports, Federal 536, Modern Status of Jurisdiction of **Federal Courts**, Under 28 U.S.C.A. § 1332(A), of Diversity Actions Affecting Probate or Other Matters Concerning Administration of Decedents' Estates.
63 American Law Reports, Federal 808, **Removal** to **Federal Court**, Under 28 U.S.C.A. § 1441(D), of Civil Action Brought in State Court Against Foreign State.
64 American Law Reports, Federal 262, Jurisdiction of **Federal Courts** Over Actions Arising Out of International or Foreign Banking or Financial Operations, or Banking in a Dependency or Insular Possession of the United States, Under § 25(B) of the Federal Reserve Act (12 U.S.C.A. § 632).
71 American Law Reports, Federal 117, Pendent Jurisdiction of **Federal Courts** in Actions Based on Diversity of Citizenship.
72 American Law Reports, Federal 191, Pendent Jurisdiction of **Federal Court** Over State Claim Against Party Not Otherwise Subject to Federal Jurisdiction Where State Claim is Sought to be Joined With Claim Arising Under Laws, Treaties, or Constitution of United States ("Pendent Party" Jurisdiction).
75 American Law Reports, Federal 600, Existence of Pendent Jurisdiction of **Federal Court** Over State Claim When Joined With Claim Arising Under Laws, Treaties, or Constitution of United States.
76 American Law Reports, Federal 46, Discretionary Exercise of Pendent Jurisdiction of **Federal Court** Over State Claim When Joined With Claim Arising Under Laws, Treaties, or Constitution of United States.
100 American Law Reports, Federal 700, "Domestic Relations" Exception to Jurisdiction of **Federal Courts** Under Diversity of Citizenship Provisions of 28 U.S.C.A. § 1332(A).
104 American Law Reports, Federal 864, When is Order, Remanding Case, Other Than Civil Rights Case, to State Court from Which Case Had Been **Removed**, Outside District Court's Authority Under 28 U.S.C.A. § 1447(C), So as to be Reviewable by Court of Appeals Notwithstanding Provisions of 28 U.S.C.A. § 1447(D).
130 American Law Reports, Federal 581, What Constitutes "Initial Pleading" for Purposes of Computing Time for **Removal** of Civil Action from State to **Federal Court** Under 28 U.S.C.A. § 1446(B).

139 American Law Reports, Federal 331, When Does Period for Filing Petition for **Removal** of Civil Action from State Court to Federal District Court Begin to Run Under 28 U.S.C.A. § 1446(B).
159 American Law Reports, Federal 377, Civil Actions **Removable** from State Court to **Federal Court** Under 28 U.S.C.A. § 1443.
162 American Law Reports, Federal 527, What is "Separate and Independent" Cause of Action Within 28 U.S.C.A. § 1441(C), as Amended in 1990, Which Permits **Removal** from State to **Federal Court**.
166 American Law Reports, Federal 297, Who is "Person Acting Under" Officer of United States or Any Agency Thereof for Purposes of Availability of Right to **Remove** State Action to **Federal Court** Under 28 U.S.C.A. § 1442(A)(1).
192 American Law Reports, Federal 1, Propriety of **Federal Court's** Abstention, Under Railroad Commission of Tex. v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L. Ed. 971 (1941), as to Claim Based on First Amendment.
193 American Law Reports, Federal 291, Appropriateness of **Federal Court** Abstention Under Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236, 47 L. Ed. 2d 483, Given the Existence of Concurrent Parallel Proceeding.
2003 American Law Reports, Federal 1, Construction and Application of Garmon Preemption Doctrine by **Federal Courts**.
12 American Law Reports 2nd 695, May **Federal Court**, Acquiring Jurisdiction Because of Federal Question But Deciding Such Question Adversely to Party Invoking Jurisdiction, Decide Non-Federal Questions.
14 American Law Reports 2nd 992, What Actions Arise Under the Laws and Treaties of the United States So as to Vest Jurisdiction of **Federal Courts**.
22 American Law Reports 2nd 904, **Removability** to **Federal Court** of Garnishment Proceedings.
30 American Law Reports 2nd 602, Criterion of Jurisdictional Amount to Vest Jurisdiction of **Federal Court** Where Injunction is Sought.
47 American Law Reports 2nd 651, Criteria of Jurisdictional Amount in Tort Action for Unliquidated Damages in **Federal Court**.
60 American Law Reports 2nd 1262, State Workmen's Compensation Proceedings as WithIn **removal** Statute.
45 American Law Reports 444, Necessity of Submitting to State Court or Judge Petition and Bond for **Removal** to **Federal Court**.
49 American Law Reports 1226, Alienage of Party as Affecting Right of **Removal** of Suit on Ground of Diverse Citizenship.
81 American Law Reports 1219, Appearance for Purpose of Making Application for **Removal** of Cause to **Federal Court** as a General Appearance.
82 American Law Reports 514, Stage of Case as Determining Whether Application for **Removal** from State to **Federal Court** is Premature.
85 American Law Reports 799, Dismissal of Action Against Resident Defendant, or Failure to Get Decision Against Him, as Ground of **Removal** to **Federal Court** of Action in Which Resident Defendant is Joined With Non Resident.
107 American Law Reports 1115, Necessity that Conditions, as Regards Jurisdictional Amount, of Right of **Removal** of Case from State to **Federal Court**, Shall Have Existed at Time of Commencement of Action.
108 American Law Reports 966, Time for Filing Petition for **Removal** of Action from State to **Federal Court** as Affected by Extension of Time for Pleading.
110 American Law Reports 188, Separable Controversy for Purpose of **Removal** from State to **Federal Court** as Arising Out of Action in Which Nonresident Master or Principal is Joined as Defendant With a Resident Servant or Agent.
114 American Law Reports 1476, Availability of Remedies Other Than Direct Appeal from or Error to **Federal Court** Under Provision of Federal Statute Denying Appeal or Writ of Error from Decision Remanding to State Court Case **Removed** to **Federal Court**.
122 American Law Reports 1425, Pendency of Action in **Federal Court** as Ground of Injunction Against Action.
132 American Law Reports 964, Comment Note.--Duty of **Federal Courts** to Follow Decisions of State Courts Other Than Those of Last Resort.
134 American Law Reports 335, Intervention or Subsequent Joinder of Parties as Affecting Jurisdiction of **Federal Court** Based Upon Diversity of Citizenship.
136 American Law Reports 938, Citizenship of Executor or Administrator as Test of Diversity of Citizenship for Purposes of Jurisdiction of **Federal Court**.

140 American Law Reports 717, Duty of **Federal Courts**, Since Erie R. Co. v. Tompkins, in Determining Ultimate Federal Question, to Follow State Laws or State Court Decisions of Substantive Character, Upon Questions Which Are Preliminary, Incidental, or Collateral to the Ultimate Federal Question.
147 American Law Reports 786, Diversity of Citizenship for Purposes of Jurisdiction of **Federal Court**, Where the Action is by or Against a State, or Subdivision or Officer Thereof.
148 American Law Reports 804, Citizenship of Receiver as Test of Diversity of Citizenship for Purposes of Jurisdiction of **Federal Court**.
148 American Law Reports 1182, Rule 14 of the Federal Civil Procedure Rules, Which Permits Defendant to Bring in as a Party a Third Person Liable in Whole or in Part for the Claim Made Against the Former, as Applicable or as Applied in Actions in Which the Jurisdiction of the **Federal Court** is Dependent Upon Diversity of Citizenship.
152 American Law Reports 972, Defendant's **Removal** of Action from State to **Federal Court** as Waiver of Defect in Federal Venue.
158 American Law Reports 9, Jurisdiction of **Federal Courts**, in Cases of Diversity of Citizenship, Over Suit Affecting Probate or Other Matters Concerning Administration of Decedent's Estate.
160 American Law Reports 942, **Removal** of Causes: Separable-Controversy Provision of **Removal** Statute as Applicable to Alternative Separable Controversies.
172 American Law Reports 1161, **Removal** to **Federal Court** of Suit Brought in State Court for Overtime Compensation Under Federal Fair Labor Standards Act.

Encyclopedias

129 Am. Jur. Proof of Facts 3d 305, Proof for **Removal** of Civil Claim or Cause of Action Related to Pending Bankruptcy Case Pursuant to 28 U.S.C.A. § 1452(A) and Fed. R. Bankr. Pro. 9027 and Responses.
187 Am. Jur. Proof of Facts 3d 277, Claim or Claims Asserted in **Federal Court** as Meeting Amount in Controversy Requirement for Purposes of Diversity Jurisdiction.
151 Am. Jur. Trials 481, Litigation of Passenger **Removal** from Mass Transportation.
2 Am. Jur. 2d Admiralty § 81, Exemption from **Removal** Jurisdiction.
3C Am. Jur. 2d Aliens and Citizens § 2120, **Removal** of Actions.
19 Am. Jur. 2d Corporations § 2048, Exclusive and Concurrent Jurisdiction of **Federal Courts** Over Shareholders' Derivative Actions; **Removal** from State to **Federal Court**.
22A Am. Jur. 2d Declaratory Judgments § 197, **Removal** Jurisdiction.
27 Am. Jur. 2d Eminent Domain § 384, **Removal** of Action from State to **Federal Court**.
27 Am. Jur. 2d Eminent Domain § 768, **Removal**.
32A Am. Jur. 2d **Federal Courts** § 745, Use of Fictitious Names.
32A Am. Jur. 2d **Federal Courts** § 1286, Nonremovable Actions.
32A Am. Jur. 2d **Federal Courts** § 1287, Original Jurisdiction of **Federal Court** as Prerequisite to **Removal** of Action.
32A Am. Jur. 2d **Federal Courts** § 1288, State Court Jurisdiction as Prerequisite to **Removal** of Action.
32A Am. Jur. 2d **Federal Courts** § 1290, Requirement that Action be "Brought" in Connection With **Removal** of Action.
32A Am. Jur. 2d **Federal Courts** § 1291, Venue Requirements in Connection With **Removal** of Action.
32A Am. Jur. 2d **Federal Courts** § 1293, Ancillary, Incidental, or Auxiliary Claims as "Civil Actions" Subject to **Removal**.
32A Am. Jur. 2d **Federal Courts** § 1296, Federal Question Jurisdiction as Basis for **Removal**, Generally.
32A Am. Jur. 2d **Federal Courts** § 1298, Pendent or Supplemental Jurisdiction in Action **Removed** to **Federal Court**.
32A Am. Jur. 2d **Federal Courts** § 1299, Requirement, on Motion for **Removal**, that Federal Claim Appear in Complaint, Generally; Well-Pleaded Complaint Rule.
32A Am. Jur. 2d **Federal Courts** § 1300, Artful Pleading Doctrine in Connection With Requirement, on Motion for **Removal**, that Federal Claim Appear in Complaint.
32A Am. Jur. 2d **Federal Courts** § 1302, Diversity Jurisdiction as Basis for **Removal** of Action, Generally; Time When Diversity Must Exist.
32A Am. Jur. 2d **Federal Courts** § 1304, "Citizen of State" Provision in Connection With **Removal** Based on Diversity Jurisdiction.

32A Am. Jur. 2d **Federal Courts** § 1309, Jurisdictional Amount in Connection With **Removal** Based on Diversity Jurisdiction.
32A Am. Jur. 2d **Federal Courts** § 1311, Joinder of **Removable** and Otherwise Nonremovable Claims.
32A Am. Jur. 2d **Federal Courts** § 1316, Actions Involving Third Party Defendants as **Removable** Based on Diversity Jurisdiction; Unincorporated Associations.
32A Am. Jur. 2d **Federal Courts** § 1317, Actions Involving Fictitiously Designated Defendants as **Removable** Based on Diversity Jurisdiction; Unincorporated Associations.
32A Am. Jur. 2d **Federal Courts** § 1319, Multiparty, Multiforum Jurisdiction in Connection With **Removal** of Actions.
32A Am. Jur. 2d **Federal Courts** § 1328, Third Party Defendants as Entitled to **Remove** Action.
32A Am. Jur. 2d **Federal Courts** § 1331, Foreign States as Entitled to **Remove** Action.
32A Am. Jur. 2d **Federal Courts** § 1341, Time for Filing of Initially **Removable** Case, Generally.
32A Am. Jur. 2d **Federal Courts** § 1348, Time for Filing Notice of **Removal** in Cases Not Initially **Removable**, Generally.
32A Am. Jur. 2d **Federal Courts** § 1360, Venue of **Removed** Action.
32A Am. Jur. 2d **Federal Courts** § 1375, Grounds for Remand to State Court, Generally.
32A Am. Jur. 2d **Federal Courts** § 1378, Remand to State Court for Determination of Damages.
32A Am. Jur. 2d **Federal Courts** § 1388, Award of Attorney's Fees on Remand.
44B Am. Jur. 2d International Law § 128, **Removal** of Action from State Court to **Federal Court** Under Foreign Sovereign Immunities Act.
48B Am. Jur. 2d Labor and Labor Relations § 2420, Procedures for **Removal** in Labor Management Relations Act Contract-Enforcement Suits; Remand to State Court.
48B Am. Jur. 2d Labor and Labor Relations § 3262, **Removal** from State to **Federal Court**.
69A Am. Jur. 2d Securities Regulation-Federal § 854, **Removal** of Securities Actions.
82 Am. Jur. 2d Wrongful Discharge § 205, **Removal** of Suit from State to **Federal Court**.

Forms

1pt2 Am. Jur. Pl. & Pr. Forms Actions § 148, Petition for and Notice of **Removal**--In Federal District Court--By Defendant--Following Severance of Improperly Joined Actions.
1B Am. Jur. Pl. & Pr. Forms Admiralty § 65, Notice of **Removal**.
1C Am. Jur. Pl. & Pr. Forms Agency § 155, Notice of **Removal** to **Federal Court**--By Principal--Joinder of Agent as Defendant Constitutes Fraudulent Joinder Solely to Destroy Diversity.
4A Am. Jur. Pl. & Pr. Forms Banks § 50, Notice of **Removal**--Complaint Alleging Unauthorized Access to Safe-Deposit Box.
5B Am. Jur. Pl. & Pr. Forms Civil Rights § 12.40, Complaint in **Federal Court**--Arrest for Prostitution--Assault and Battery of Plaintiff by Officers--For Injunctive Relief and Damages.
5C Am. Jur. Pl. & Pr. Forms Collection and Credit Agencies § 43, Complaint in **Federal Court**--Violation of Federal Fair Credit Reporting Act--Failure to **Remove** Incorrect Information from Report.
5C Am. Jur. Pl. & Pr. Forms Collection and Credit Agencies § 57, Notice of **Removal**--Action Under Fair Credit Reporting Act.
5C Am. Jur. Pl. & Pr. Forms Commerce § 17, Notice of **Removal** of Action in **Federal Court**--Allegations--Jurisdiction Based on Alleged Violation of Labor Contract Involving Interstate Commerce.
5C Am. Jur. Pl. & Pr. Forms Commerce § 18, Notice of **Removal** of Action in **Federal Court**--Allegations--Jurisdiction Based on Diversity of Citizenship--Arbitration Controversy Involving Transactions in Interstate Commerce.
5C Am. Jur. Pl. & Pr. Forms Commerce § 19, Notice of **Removal** of Action in **Federal Court**--Regulation of Advertising Controversy Involving Transactions in Interstate Commerce.
7C Am. Jur. Pl. & Pr. Forms Courts § 5, Complaint in **Federal Court**--Allegation--Jurisdiction Based on Diversity and Requisite Amount in Controversy--Defendant as Successor-In-Interest.
7C Am. Jur. Pl. & Pr. Forms Courts § 28, Notice--Of **Removal**--In **Federal Court**--Under Class Action Fairness Act (CAFA)--Statutory Requirement of Specific Amount in Controversy.
7C Am. Jur. Pl. & Pr. Forms Courts § 29, Notice--Allegation--**Removal** from State to **Federal Court**--Diversity and Requisite Amount in Controversy.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 325, Checklist--Drafting Notice of **Removal** of Action from State Court to Federal District Court Under General **Removal** Statute.

11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 326, Notice of **Removal**--General Form.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 327, Notice of **Removal**--Diversity of Citizenship.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 330, Notice of **Removal**--Joinder of **Removable** Separate and Independent Claim or Cause of Action With Other Actions--Each Plaintiff's Cause of Action Based on Different Contract.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 331, Notice of **Removal**--Diversity of Citizenship--Allegation--Garnishment Action.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 332, Notice of **Removal**--Diversity of Citizenship--Allegation--Jurisdiction Proper Despite Nominal Defendant Residing in State Where Action Pending.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 333, Notice of **Removal**--Diversity of Citizenship--Allegation--Jurisdiction Proper Despite Citizenship of One of Defendants in State Where Action Originally Commenced--Resident Defendant Should be Realigned as Party Plaintiff for Purposes of **Removal**.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 334, Notice of **Removal**--Diversity of Citizenship--Allegation--Fraudulent Joinder of Defendant to Prevent **Removal**--Fictitious Defendants.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 337, Notice of **Removal**--Allegation--Jurisdiction Based on Federal Question--General Form.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 338, Notice of **Removal**--Allegation--Jurisdiction Based on Federal Question--Action Under Lanham Act.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 339, Notice of **Removal**--Allegation--Jurisdiction Based on Federal Question--Action Under Labor Management Relations Act.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 340, Notice of **Removal**--Allegation--Action Against Common Carrier Under 49 U.S.C.A. § 11707.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 341, Notice of **Removal**--Allegation--Jurisdiction Based on Alleged Violation of Labor Contract Involving Interstate Commerce.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 342, Notice of **Removal**--Allegation--Jurisdiction Based on Diversity of Citizenship and Federal Question--Arbitration Controversy Involving Transactions in Interstate Commerce.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 343, Notice of **Removal**--Allegation--Entire Action **Removable**--Joinder of **Removable** and Non-**Removable** Causes of Action.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 345, Notice of **Removal**--Allegation--Timely Filing of Notice Despite Lapse of More Than 30 Days After Service of Initial Pleading in State Court Proceeding--Amended Pleading First Set Forth Ground for **Removal**.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 353, Motion--For Order Permitting **Removing** Party to Amend Notice of **Removal**--To State Ground for **Removal** More Specifically.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 354, Order--Permitting **Removing** Party to Amend Notice of **Removal**--To State Ground for **Removal** More Specifically.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 365, Motion--For Order Remanding Action to State Court--No Separate and Independent Claim or Cause of Action Within District Court's Original and **Removal** Jurisdiction.
11A Am. Jur. Pl. & Pr. Forms Federal Practice and Procedure § 403, Order--Granting Preliminary Injunction Restraining Plaintiff from Proceeding in State Court--Action Properly **Removed** to United States District Court.
14A Am. Jur. Pl. & Pr. Forms Infants § 98, Notice of **Removal**--By Defendant Insurer--Action by Infant for Injuries Incurred as Passenger in Auto Accident.
19C Am. Jur. Pl. & Pr. Forms Pollution Control § 63.30, Complaint in **Federal Court**--Diversity of Citizenship--Air Pollution Caused by Fertilizer Plant--Exposure to Hazardous Wastes and Chemicals--Multiple Causes of Action.
20BP2 Am. Jur. Pl. & Pr. Forms Products Liability § 285, Notice of **Removal**--From State Court to Federal District Court--Suit for Strict Products Liability (Failure to Warn); Negligence and Gross Negligence; Breach of Warranties; Fraudulent Concealment--Taser Electronic Control Device.
24C Am. Jur. Pl. & Pr. Forms Waters § 13, Notice of **Removal**--Breach of Contract Action--Installation of Inadequate Well and Damage to Drain Field and Septic System.
25B Am. Jur. Pl. & Pr. Forms Workers' Compensation § 128.50, Notice of **Removal**--By Defendant Insurer--Improper Joinder to Defeat Diversity.

7 Employment Discrimination Coordinator Forms, Pleadings and Practice Aids § 5:28, Notice of **Removal**--Sample Form.
3A Federal Procedural Forms § 7:167, Allegation in Motion--Notice of **Removal**--Federal Aviation Act [28 U.S.C.A. § 1441(B)].
3A Federal Procedural Forms § 7:219, Notice of **Removal**--Personal Injury Claim Preempted by Montreal Convention Constitutes Federal Claim [28 U.S.C.A. §§ 1331, 1441, 1446, 1447].
3B Federal Procedural Forms § 8:357.30, Notice of **Removal**--Action Arises Out of Transactions Involving International or Foreign Banking (12 U.S.C.A. §§ 632, 3102).
3B Federal Procedural Forms § 8:381, Notice of **Removal** [12 U.S.C.A. § 632; 28 U.S.C.A. § 1441].
3B Federal Procedural Forms § 8:381.50, Notice of **Removal**--Diversity of Citizenship--National Bank Citizenship for Diversity Purposes (28 U.S.C.A. §§ 1332, 1348, 1441, 1446).
3 Federal Procedural Forms § 4:5, **Removal**.
3 Federal Procedural Forms § 6:126, Complaint--In **Federal Court**--Personal Injuries from Exposure to Uranium and Thorium--Notice of **Removal** from State Court [28 U.S.C.A. §§ 1331, 1441, 1446(B); 42 U.S.C.A. §§ 2011, 2014, 2210].
4A Federal Procedural Forms § 9B:34, Authority for **Removal**.
5 Federal Procedural Forms § 11:1, Class Actions in **Federal Courts**.
5 Federal Procedural Forms § 11:79.30, Allegation in Complaint--Class Action Fairness Act--Notice of **Removal** (28 U.S.C.A. §§ 1332(D)(2), 1441).
9B Federal Procedural Forms § 32:39, **Removal** of Action from State to **Federal Court**.
9B Federal Procedural Forms § 32:40, **Removal** of Action from State to **Federal Court**--Extension of Time for Cause Shown.
9B Federal Procedural Forms § 32:41, **Removal** of Action from State to **Federal Court**--Effect of Multiple Defendants.
9B Federal Procedural Forms § 32:42, **Removal** of Action from State to **Federal Court**--Remand to State Court.
9B Federal Procedural Forms § 32:82, Notice of **Removal**--By Defendant Airline Wholly Owned by Foreign Government--Rights of Parties Governed by International Treaty [28 U.S.C.A. §§ 1330, 1331, 1441, 1446, 1603, 1608].
9B Federal Procedural Forms § 32:83, Notice of **Removal**--By Defendant Employer that is an Instrumentality of a Foreign State [28 U.S.C.A. §§ 1330, 1441, 1603].
9 Federal Procedural Forms § 27:110, Prohibition Against **Removal**.
10A Federal Procedural Forms § 35:132, Notice of **Removal**--Under Hatch Act [5 U.S.C.A. §§ 1501 et seq.; 28 U.S.C.A. §§ 1441, 1446].
10Bpt1 Federal Procedural Forms § 37:44, Notice of **Removal**--Complaint Alleging Wrongful Disqualification from Participation in Supplemental Nutrition Assistance Program (28 U.S.C.A. §§ 1346, 1441, 1442, 1446, 2671).
11 Federal Procedural Forms § 43:270, Notice of **Removal**--Tax Liens Attached to Property (28 U.S.C.A. § 1444).
12APT1 Federal Procedural Forms § 46:189.50, Notice of **Removal** [28 U.S.C.A. §§ 1331, 1332, 1441 and 1446; 29 U.S.C.A. § 185].
12B Federal Procedural Forms § 47:8, **Removal**.
13B Federal Procedural Forms § 53:153, Notice of **Removal**--FERS (5 U.S.C.A. § 8472).
13 Federal Procedural Forms § 49:65, Notice of **Removal**--To Court Governing Multidistrict Litigation [28 U.S.C.A. §§ 1332, 1441 and 1446].
13 Federal Procedural Forms § 49:66, Notice of **Removal**--To Court Governing Multidistrict Litigation--Improper Joinder by Plaintiff to Avoid Complete Diversity [28 U.S.C.A. §§ 1332, 1441 and 1446].
14A Federal Procedural Forms § 59:285, **Removal** to **Federal Court**.
14 Federal Procedural Forms § 58:11, Actions Subject to Special **Removal** Provisions.
14 Federal Procedural Forms § 58:12, Statutory Restrictions on Actions Subject to **Removal**.
14 Federal Procedural Forms § 58:28, Allegations in Notice--Jurisdiction Based on Diversity of Citizenship--Nondiverse Defendant Not Served at Time of **Removal** (28 U.S.C.A. §§ 1332, 1441, 1446).
14 Federal Procedural Forms § 58:31, Petition for **Removal**--Fraudulent Joinder of Nondiverse Corporate Agent (28 U.S.C.A. §§ 1332, 1441, and 1446).
14 Federal Procedural Forms § 58:42, Allegations in Notice--Entire Action **Removable**--Joinder of **Removable** and Nonremovable Causes of Action (28 U.S.C.A. §§ 1441(C), 1446).
14 Federal Procedural Forms § 58:43, Parties Entitled to **Remove**.

14 Federal Procedural Forms § 58:44, Parties that Must Join in or Consent to **Removal**.
14 Federal Procedural Forms § 58:50, Timely Filing of Notice of **Removal**--Civil Actions.
14 Federal Procedural Forms § 58:56, Notice of **Removal** of Civil Action--Federal Question (28 U.S.C.A. §§ 1331, 1441(A), 1446).
14 Federal Procedural Forms § 58:57, Notice of **Removal** of Civil Action--Improper Joinder of Nondiverse Defendant (28 U.S.C.A. § 1446(B)).
14 Federal Procedural Forms § 58:59, Allegations in Notice--Notice Timely Filed--Defendant Recently Received Amended Pleading Making Case **Removable** (28 U.S.C.A. § 1446(B)(3)).
14 Federal Procedural Forms § 58:61, Notice of **Removal**--Consent of Codefendant Not Needed (28 U.S.C.A. § 1441).
14 Federal Procedural Forms § 58:95, Motion--For Preliminary Injunction Enjoining Proceedings in State Court Case Filed After **Removal** of Prior Similar Case to District Court--Case Filed to Subvert District Court's **Removal** Jurisdiction (Fed. R. Civ. P. 65).
14 Federal Procedural Forms § 58:113, Postremand Jurisdiction of **Federal Court**.
14 Federal Procedural Forms § 58:118, Allegation in Motion to Remand--District Court Lacks **Removal** Jurisdiction--Proceeding **Removed** Not "Civil Action" (28 U.S.C.A. §§ 1441, 1447(C)).
14 Federal Procedural Forms § 58:119, Allegation in Motion to Remand--District Court Lacks **Removal** Jurisdiction--Case **Removed** to Wrong District (28 U.S.C.A. §§ 1441(A), 1447(C)).
14 Federal Procedural Forms § 58:127, Order--Denying Motion to Remand--**Removal** Jurisdiction Based on Federal Question (28 U.S.C.A. §§ 1331, 1441, 1447).
14 Federal Procedural Forms § 58:142, Allegation in Motion to Remand--District Court Lacks **Removal** Jurisdiction--Civil Action Arises Under State Workers' Compensation Laws--Plaintiff's Claims Should Not be Severed; the Entire Case Should be Remanded (28 U.S.C.A. § 1445(C)).
15 Federal Procedural Forms § 61:75, Motion and Notice--By Defendant--In Conjunction With Notice of **Removal** [28 U.S.C.A. §§ 1441, 1446; Fed. R. Civ. P. 6(B) and 81(C)].
17 Federal Procedural Forms § 66:199.50, Motion--For **Removal**--Action Subject to Interstate Commerce Act and Surface Transportation Board [49 U.S.C.A. § 14706].
2 West's Federal Forms § 2:7, Procedure for **Removal**.
2 West's Federal Forms § 2:10, **Removal** Based on Diversity of Citizenship or Alienage.
2 West's Federal Forms § 2:12, **Removal** of Federal Question Cases.
2 West's Federal Forms § 2:18.50, Notice of **Removal**--Describing Amount in Controversy.
2 West's Federal Forms § 2:39, Allegations of Joinder of **Removable** and Nonremovable Claims [28 U.S.C.A. § 1441].
2 West's Federal Forms § 2:40, Allegations of Joinder of **Removable** and Nonremovable Causes of Action--Description of Action [28 U.S.C.A. § 1441].
2 West's Federal Forms § 2:48.50, Notice of **Removal** Before Defendant Formally Served.
2 West's Federal Forms § 2:48.70, Notice of **Removal**--Fraudulent Misrepresentations Regarding Modification of Loans.
7 West's Federal Forms § 10684, Notice of **Removal**--Diversity Grounds.
7 West's Federal Forms § 10685, Notice of **Removal**--Federal Question.

Treatises and Practice Aids

2 Americans With Disabilities: Practice and Compliance Manual § 7:354, **Removal** of Case from State to **Federal Court**.
1 Bankruptcy Law Fundamentals § 15:13, Jurisdiction of Bankruptcy Cases and Proceedings--A Bankruptcy Defense May Not Ground Federal **Removal** Jurisdiction: Rivet v. Regions Bank of Louisiana.
1 Bankruptcy Law Manual § 2:15 (5th ed.), **Removal**; Remand.
Bankruptcy Practice for the General Practitioner § 6:6, Initiating an Adversary Proceeding--**Removal** or Transfer of Adversary Proceedings.
6B Bankruptcy Service Lawyers Edition § 59:950, Actions Which May be **Removed**--Particular Types of Actions.
7 Callmann on Unfair Competition, Trademarks, and Monopolies § 24:25 (4th Ed.), Venue--**Federal Courts**--Matters **Removed** to **Federal Court**.

7 Callmann on Unfair Competition, Trademarks, and Monopolies § 24:39 (4th Ed.), Subject Matter Jurisdiction in **Federal Courts**--Diversity Jurisdiction--Diversity.
7 Callmann on Unfair Competition, Trademarks, and Monopolies § 24:41 (4th Ed.), Subject Matter Jurisdiction in **Federal Courts**--**Removal** from and Remand to State Court.
2 Employment Coordinator Benefits § 45:24, **Removal** of Action to **Federal Court**.
8 Employment Coordinator Employment Practices § 95:117, **Removal** Based on Existence of Federal Question.
8 Employment Coordinator Employment Practices § 99:5, **Removal** from State Courts.
8 Employment Coordinator Employment Practices § 115:5, **Federal Court** Diversity Jurisdiction.
8 Employment Coordinator Employment Practices § 115:10, **Removal** of Suit from State to **Federal Court**.
12 Employment Coordinator Labor Relations § 53:173, Availability of **Removal**.
12 Employment Coordinator Labor Relations § 53:176, Procedures for **Removal**.
3 Employment Discrimination Coordinator Analysis of Federal Law § 108:2, **Removal** Under § 1441.
3 Employment Discrimination Coordinator Analysis of Federal Law § 108:5, **Removal** of Actions Including Both **Removable** and Nonremovable Claims.
3 Employment Discrimination Coordinator Analysis of Federal Law § 108:13, Remand for Defect In **removal** Procedure.
6 Employment Discrimination Coordinator Analysis of Related Issues and Actions § 3:10, **Removal** of Suit from State to **Federal Court**.
2 Employment Discrimination Law and Litigation § 12:44, **Removal** of Lawsuits Filed in State Courts to **Federal Courts** If They Meet the Statutory Requirements for **Removal** Under Either 28 U.S.C.A. § 1441(A) or the Class Action Fairness Act.
4A Federal Procedure, Lawyers Edition § 8:593, Statutory Bases for **Removal**.
4A Federal Procedure, Lawyers Edition § 8:594, Extent of Right to **Remove** Under 12 U.S.C.A. § 1819.
4B Federal Procedure, Lawyers Edition § 8:1621, Subject-Matter Jurisdiction of Court to Which Action is **Removed**.
4B Federal Procedure, Lawyers Edition § 8:1622, Effect of Parties' Citizenship on **Removability**.
4B Federal Procedure, Lawyers Edition § 8:1625, Litigation Arising Out of Foreign Banking Transactions--Who Must Join In **removal** Petition.
4 Federal Procedure, Lawyers Edition § 7:822, Claims Brought in State Court; **Removal** to **Federal Court**.
5B Federal Procedure, Lawyers Edition § 10:163, **Removal** Jurisdiction.
5 Federal Procedure, Lawyers Edition § 9:431, **Removal** of Related Matters to Bankruptcy Court, Generally.
6 Federal Procedure, Lawyers Edition § 11:103, **Removal** of Civil Rights Claim Joined With Nonremovable Claim.
7 Federal Procedure, Lawyers Edition § 14:10, **Removal** of Condemnation Proceeding from State to **Federal Court**.
7 Federal Procedure, Lawyers Edition § 14:193, Courts With Jurisdiction Over Tucker Act Action; **Removal** from State to **Federal Court**.
7 Federal Procedure, Lawyers Edition § 16:269, Jurisdiction Over Consumer Product Liability Suits--**Removal**.
8 Federal Procedure, Lawyers Edition § 21:27, **Removal** of Actions.
8 Federal Procedure, Lawyers Edition § 21:63, **Removal**.
10 Federal Procedure, Lawyers Edition § 23:42, Diversity Jurisdiction of Declaratory Judgment Suits--**Removal** Jurisdiction.
10 Federal Procedure, Lawyers Edition § 25:22, Exclusive or Concurrent Jurisdiction; **Removal** from State to **Federal Court**.
11 Federal Procedure, Lawyers Edition § 30:22, Joinder of Federal and State Law Claims Under Fela; **Removal**.
11 Federal Procedure, Lawyers Edition § 30:94, Prohibition Against **Removal**.
13A Federal Procedure, Lawyers Edition § 36:449, Extension of Time for **Removal** for Cause Shown.
13A Federal Procedure, Lawyers Edition § 36:450, **Removal** of Entire Case.
16 Federal Procedure, Lawyers Edition § 40:804, **Removal** of State Action Against Federal Employees to **Federal Court**; Federal Officer **Removal** Act.
16 Federal Procedure, Lawyers Edition § 40:808, Joinder of Defendants In **removal** Petition Under Federal Officer **Removal** Statute.
16 Federal Procedure, Lawyers Edition § 40:820, Jurisdictional Facts Necessary for **Removal** of State Action Against Federal Officer.
19 Federal Procedure, Lawyers Edition § 46:996, **Removal** of Cases Involving Indians from State Courts.
21 Federal Procedure, Lawyers Edition § 50:517, **Removal** of Federal Claim.

22B Federal Procedure, Lawyers Edition § 52:1621, **Removal** of Actions Under Fair Labor Standards Act to **Federal Court**.
23 Federal Procedure, Lawyers Edition § 54:112, **Removal** Jurisdiction.
27 Federal Procedure, Lawyers Edition § 61:283, **Removal** of Civil Action Involving ERISA Claims to **Federal Court**, Generally.
27 Federal Procedure, Lawyers Edition § 61:285, **Removal** on Basis that State Claim is Preempted by ERISA.
27 Federal Procedure, Lawyers Edition § 61:289, Waiver of Right to **Remove** State Court Action Involving ERISA.
27 Federal Procedure, Lawyers Edition § 61:290, **Removal** of State Court Action Involving ERISA When Multiple Defendants Involved.
28 Federal Procedure, Lawyers Edition § 63:6, **Removal** of Actions to Which the Postal Service is a Party.
28 Federal Procedure, Lawyers Edition § 63:19, **Removal** of Garnishment Actions by Postal Service.
29A Federal Procedure, Lawyers Edition § 69:1, Controlling Law as to **Removal** of Actions.
29A Federal Procedure, Lawyers Edition § 69:3, Original Jurisdiction of **Federal Court** as Prerequisite to **Removal**.
29A Federal Procedure, Lawyers Edition § 69:4, Lack of State Court Jurisdiction as Not Precluding **Removal**.
29A Federal Procedure, Lawyers Edition § 69:6, What is a "Civil Action" for **Removal** Purposes.
29A Federal Procedure, Lawyers Edition § 69:7, What is a "Civil Action" for **Removal** Purposes--Ancillary, Incidental, or Auxiliary Claims.
29A Federal Procedure, Lawyers Edition § 69:8, What is "State Court" for **Removal** Purposes.
29A Federal Procedure, Lawyers Edition § 69:9, What is "State Court" for **Removal** Purposes--District of Columbia and Territorial or Tribal Courts.
29A Federal Procedure, Lawyers Edition § 69:10, When is Action "Brought" for **Removal** Purposes.
29A Federal Procedure, Lawyers Edition § 69:11, Venue Requirements for **Removal**.
29A Federal Procedure, Lawyers Edition § 69:12, **Removal** Based on Federal Question Jurisdiction, Generally.
29A Federal Procedure, Lawyers Edition § 69:17, Defense as Basis for Federal Question Jurisdiction for **Removal** Purposes--Preemption.
29A Federal Procedure, Lawyers Edition § 69:20, **Removal** Jurisdiction Based on Diversity, Generally.
29A Federal Procedure, Lawyers Edition § 69:23, "Citizen of State" Provision as Affecting **Removal** Jurisdiction Based on Diversity.
29A Federal Procedure, Lawyers Edition § 69:39, **Removal** of Actions Involving Third-Party Defendants.
29A Federal Procedure, Lawyers Edition § 69:40, **Removal** of Actions Involving Fictitiously Designated Defendants.
29A Federal Procedure, Lawyers Edition § 69:42, Defendants Who Must Join to **Remove** Where Federal Law Claims Are Joined With State-Law Claims.
29A Federal Procedure, Lawyers Edition § 69:53, **Removal** as Limited to Defendants--"Counterdefendants" and Cross-Claim Defendants.
29A Federal Procedure, Lawyers Edition § 69:56, Foreign States as Entitled to **Remove**.
29A Federal Procedure, Lawyers Edition § 69:67, Time for Filing Notice of **Removal** of Actions Initially **Removable**, Generally.
29A Federal Procedure, Lawyers Edition § 69:101, Venue of **Removed** Action.
29A Federal Procedure, Lawyers Edition § 69:106, Limited Availability of Remand to State Court After **Removal**.
29A Federal Procedure, Lawyers Edition § 70:322, **Removal** of Securities Actions; Exceptions for Covered Class Actions; Securities Investor Protection Act.
32A Federal Procedure, Lawyers Edition § 75:464, **Removal** Jurisdiction in Unfair Competition Cases.
32 Federal Procedure, Lawyers Edition § 74:466, **Removal** of Trademark Infringement Actions to **Federal Court**; Remand to State Court.
Federal Tort Claims § 20:10, **Removal** of Action from State Court.
2 Law of Copyright, The § 13:17.70, Subject Matter Jurisdiction--Preemption of State Law as a Basis for **Removal**.
6 McCarthy on Trademarks and Unfair Competition § 32:7 (5th ed.), Federal Question Jurisdiction--Infringement of Federally Registered Mark--Suit Filed in State Court and **Removed** to **Federal Court**.
6 McCarthy on Trademarks and Unfair Competition § 32:13 (5th ed.), Federal Question Jurisdiction--Infringement of Unregistered Marks--**Removal** from State to **Federal Court**.

2 Newberg on Class Actions § 6:15 (5th ed.), CAFA's **Removal** Rules.
2 Newberg on Class Actions § 6:34 (5th ed.), Venue of **Removed** Actions.
Wright & Miller Federal Practice and Procedure § 1024, Application of Rules--**Removed** Cases.
Wright & Miller Federal Practice and Procedure § 1824, Subject-Matter Jurisdiction in Shareholder-Derivative Actions--**Removal**.
Wright & Miller Federal Practice and Procedure § 3527, Exclusive **Federal Court** Jurisdiction.
Wright & Miller Federal Practice and Procedure § 3674, **Removal** of Admiralty Cases.
Wright & Miller Federal Practice and Procedure § 3721.1, **Removal** Requirements.
Wright & Miller Federal Practice and Procedure § 3722, **Removal** Based on Federal-Question Jurisdiction.
Wright & Miller Federal Practice and Procedure § 3722.3, **Removal** Based on Federal-Question Jurisdiction--**Removal** Based on Separate and Independent Claims or Causes of Action.
Wright & Miller Federal Practice and Procedure § 3723, **Removal** Based on Diversity of Citizenship and Alienage Jurisdiction.
Wright & Miller Federal Practice and Procedure § 3724, **Removal** Based on Diversity of Citizenship and Alienage Jurisdiction--**Removal** Based on the Class Action Fairness Act and the Multiparty, Multiforum Trial Jurisdiction Act.
Wright & Miller Federal Practice and Procedure § 3725, Amount in Controversy In **removed** Actions.
Wright & Miller Federal Practice and Procedure § 3725.3, Amount in Controversy In **removed** Actions--Aggregation of Claims, Supplemental Jurisdiction, and Non-Monetary Relief.
Wright & Miller Federal Practice and Procedure § 3726, **Removal** of Particular Cases--Federal Officers and Agencies.
Wright & Miller Federal Practice and Procedure § 3728, **Removal** of Particular Cases--Proceedings Under Other Statutes Providing for **Removal**.
Wright & Miller Federal Practice and Procedure § 3728.1, **Removal** of Particular Cases--**Removal** in Cases Involving Foreign States and State-Owned Entities.
Wright & Miller Federal Practice and Procedure § 3728.2, **Removal** of Particular Cases--Proceedings Under Statutes Prohibiting **Removal**.
Wright & Miller Federal Practice and Procedure § 3730, Procedure for **Removal**--Who May Seek **Removal**.
Wright & Miller Federal Practice and Procedure § 3731, Procedure for **Removal**--Time for Seeking **Removal**.
Wright & Miller Federal Practice and Procedure § 3732, Procedure for **Removal**--Venue In **removed** Actions.
Wright & Miller Federal Practice and Procedure § 3733, Procedure for **Removal**--Content and Amendment of the Notice of **Removal**.
Wright & Miller Federal Practice and Procedure § 3734, Procedure for **Removal**--Stating the Grounds of **Removability**.
Wright & Miller Federal Practice and Procedure § 3736, Procedure for **Removal**--When **Removal** is Effective; Further Proceedings in State Court.
Wright & Miller Federal Practice and Procedure § 3914.11, Finality--Orders Prior to Trial--**Removal** and Remand.

Relevant Notes of Decisions (1983)

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GENERALLY

Generally

Federal **removal** statute does not permit "snap **removal**" in diversity cases, that is, **removal** before a forum defendant is served; even if plain language of statute were not ambiguous but, instead, unambiguously permitted snap **removal**, the result would be absurd because such reading would contravene congressional intent by conflicting with the purpose of the longstanding forum defendant rule and promoting the very type of forum-shopping gamesmanship the statute was amended to prevent, and also would run counter to the expressly limited nature of diversity jurisdiction, courts' presumption against **removal**, and public policy considerations surrounding plaintiff's choice of forum. Deutsche Bank National Trust Company as Trustee for

American Home Mortgage Investment Trust 2007-1 v. Old Republic Title Insurance Group, Inc., D.Nev.2021, 532 F.Supp.3d 1004. **Removal** of Cases 45

While plaintiff has right initially to choose state court as forum for his action, defendant has subsequent equal right to resort to **federal court** by compliance with this section, transferring indirectly original jurisdiction from state to **federal court**. Garland v. Humble Oil & Refining Co., E.D.Tenn.1969, 306 F.Supp. 608. **Removal** Of Cases 1

Constitutionality

Acts of Congress authorizing the **removal** of causes are constitutional. Home Life Ins. Co. of Brooklyn v. Dunn, U.S.Ohio 1873, 86 U.S. 214, 22 L.Ed. 68, 19 Wall. 214. See, also, Ames v. Kansas, Kan.1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 482; Fisk v. Union Pac. R. Co., C.C.N.Y.1869, Fed.Cas. No. 4,827.

Former §§ 71 and 72 of this title were not unconstitutional as abridging plaintiff's privileges and immunities, by permitting a nonresident defendant to **remove** a case to **federal court** for diversity of citizenship, when plaintiff had chosen to bring action in courts of his own state. Kithcart v. Metropolitan Life Ins. Co., C.C.A.8 (Mo.) 1945, 150 F.2d 997, certiorari denied 66 S.Ct. 267, 326 U.S. 777, 90 L.Ed. 470, rehearing denied 66 S.Ct. 469, 326 U.S. 812, 90 L.Ed. 496, rehearing denied 66 S.Ct. 520, 327 U.S. 813, 90 L.Ed. 1038. Constitutional Law 2920; **Removal** Of Cases 2

The Supreme Court by uniformly construing provision of former § 71 of this title authorizing **federal court** to **remove** separable controversy as authorizing **removal** of entire case to **federal court** by necessary implication had held such provision to be constitutional. Texas Emp. Ins. Ass'n v. Felt, C.C.A.5 (Tex.) 1945, 150 F.2d 227. Courts 90(3)

To the extent subsection of **removal** statute purports to allow the **removal** to **federal court** of state law claims which are factually unrelated to a "separate and independent" federal claim, the statute exceeds constitutional limits of federal power in that, in order to be **removable**, state claims need not arise out of same nucleus of operative fact as federal claims, thereby sanctioning assumption of jurisdiction in **removal** action that would not be permissible in original action. Porter v. Roosa, S.D.Ohio 2003, 259 F.Supp.2d 638. **Removal** Of Cases 48.1

Because statute allowing **removal** of separate and independent state claims, in its present form, expressly applies only to state court actions that include federal question, that provision is unconstitutional. Salei v. Boardwalk Regency Corp., E.D.Mich.1996, 913 F.Supp. 993. **Removal** Of Cases 2

Former § 71 of this title providing for **removal** to **federal courts** of suits between residents of different states was authorized by provision of U.S.C.A.Const. Art. 3, § 2, cl. 1, that judicial power of **federal courts** shall extend to controversies between citizens of different states, and U.S.C.A.Const. Amends. 9, 10 and 14, § 1, had no relevancy. Kithcart v. Metropolitan Life Ins. Co., W.D.Mo.1944, 55 F.Supp. 200. **Removal** Of Cases 26

Construction--Generally

Court of Appeals strictly construes **removal** statute against **removal** jurisdiction. Boggs v. Lewis, C.A.9 (Mont.) 1988, 863 F.2d 662. **Removal** Of Cases 2

This section should be construed narrowly and against **removal**. People of State of Ill. v. Kerr-McGee Chemical Corp., C.A.7 (Ill.) 1982, 677 F.2d 571, certiorari denied 103 S.Ct. 469, 459 U.S. 1049, 74 L.Ed.2d 618.

Out of respect for the independence of state courts, and in order to control the federal docket, **federal courts** construe the **removal** statute narrowly, resolving any doubts against **removability**. Veneruso v. Mount Vernon Neighborhood Health Center,

S.D.N.Y.2013, 933 F.Supp.2d 613, affirmed 586 Fed.Appx. 604, 2014 WL 1776011. **Removal** of Cases 2; **Removal** of Cases 107(7)

Removal statutes are to be strictly construed, both because the **federal courts** are courts of limited jurisdiction and because **removal** of a case implicates significant federalism concerns. In re Facebook, Inc., IPO Securities and Derivative Litigation, S.D.N.Y.2013, 922 F.Supp.2d 475. **Federal Courts** 2015; **Removal** Of Cases 2

Statutes conferring jurisdiction upon the **federal courts**, and particularly **removal** statutes, are to be narrowly construed in light of the courts' constitutional role as limited tribunals, and all doubts are to be resolved against **removal**. Public Employees Retirement Ass'n of New Mexico v. Clearlend Securities, D.N.M.2011, 798 F.Supp.2d 1265. **Federal Courts** 2014; **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Removal of civil cases to **federal court** is infringement on state sovereignty, and statutory provisions regulating **removal** thus must be strictly applied; **federal court** should not extend its jurisdiction beyond boundaries drawn by those provisions. Freeman v. Bechtel, M.D.N.C.1996, 936 F.Supp. 320. **Removal** Of Cases 2

Congressional acts regulating jurisdiction of **federal courts**, including **removal** statute, are subject to strict construction by courts. Sirois v. Business Exp., Inc., D.N.H.1995, 906 F.Supp. 722. **Federal Courts** 2014; **Removal** Of Cases 2

Removal and diversity statutes should be interpreted strictly to limit **removal** and diversity jurisdiction of **federal courts**. Swallow & Associates v. Henry Molded Products, Inc., E.D.Mich.1992, 794 F.Supp. 660. **Federal Courts** 2014; **Removal** Of Cases 2

Due respect to state sovereignty and independence of state courts demands that **federal courts** exercise their right to **remove** cases properly before state courts only in strict conformity with **removal** authority granted by Congress. McCaslin v. Blue Cross and Blue Shield of Alabama, N.D.Ala.1991, 779 F.Supp. 1312. **Removal** Of Cases 2

Removal statutes should be strictly construed, and if **removal** appears improper, trial court at any time before final judgment must remand action to state court. Bahr v. National Ass'n of Securities Dealers, Inc., S.D.Fla.1991, 763 F.Supp. 584. **Removal** Of Cases 2; **Removal** Of Cases 100

Statute providing for **removal** from state court of civil actions of which **federal courts** have original jurisdiction must at all times be strictly construed out of regard for "rightful independence" of state courts. Commercial Sales Network v. Sadler-Cisar, Inc., N.D.Ohio 1991, 755 F.Supp. 756. **Removal** Of Cases 2

Right of **removal** is a congressionally imposed infringement on a state court's power to determine controversies and, therefore, **removal** statutes must be strictly construed. Grant County Sav. and Loan Ass'n v. Arkansas Custom Homes, Inc., E.D.Ark.1988, 698 F.Supp. 169. **Removal** Of Cases 2

Right to **removal** of case is statutory grant to be strictly construed, and defendant seeking **removal** must base petition on specific **removal** provision and specific grant of original jurisdiction in district court. Mercy Hosp. Ass'n v. Miccio, E.D.N.Y.1985, 604 F.Supp. 1177. **Removal** Of Cases 2; **Removal** Of Cases 86(1)

Removal of civil cases to **federal court** is an infringement on state sovereignty, and consequently the statutory provisions regulating **removal** must be strictly applied. Mason v. International Business Machines, Inc., M.D.N.C.1982, 543 F.Supp. 444. **Removal** Of Cases 2

Given fact that this section is to be strictly construed, balance lies in favor of curtailing access to **federal courts** of controversies which do not have independent basis for federal jurisdiction. Luebbe v. Presbyterian Hospital in City of New York at Columbia-Presbyterian Medical Center, S.D.N.Y.1981, 526 F.Supp. 1162. **Removal** Of Cases 2

---- Doubts resolved against removal, construction

Statute allowing for **removal** should be construed narrowly, with doubt construed against **removal**. Diaz v. Sheppard, C.A.11 (Fla.) 1996, 85 F.3d 1502, rehearing denied, rehearing and suggestion for rehearing en banc denied 99 F.3d 1157, certiorari denied 117 S.Ct. 1349, 520 U.S. 1162, 137 L.Ed.2d 506. **Removal** Of Cases 2

Because lack of jurisdiction would make any decree in case void and continuation of litigation in **federal court** futile, **removal** statute [28 U.S.C.A. § 1441] should be strictly construed and all doubts resolved in favor of remand. Abels v. State Farm Fire & Cas. Co., C.A.3 (Pa.) 1985, 770 F.2d 26. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Ambiguities are generally construed against **removal**. Butler v. Polk, C.A.5 (Miss.) 1979, 592 F.2d 1293. **Removal** Of Cases 86(1)

Because **removal** raises significant federalism concerns, the **removal** statutes are strictly and narrowly construed, with any doubt resolved against **removal** and in favor of remand. Holmes v. Acceptance Cas. Ins. Co., E.D.Tex.2013, 942 F.Supp.2d 637. **Removal** of Cases 2; **Removal** of Cases 107(7)

Federal **removal** jurisdiction must be rejected if there is any doubt as to the right of **removal** in the first instance. Merced Irr. Dist. v. County of Mariposa, E.D.Cal.2013, 941 F.Supp.2d 1237. **Removal** of Cases 107(7)

Removal statute should be strictly construed and all doubts resolved in favor of remand. Weil v. Process Equipment Co. of Tipp City, S.D.Ohio 2012, 879 F.Supp.2d 745. **Removal** of Cases 2; **Removal** of Cases 107(7)

In deciding whether **removal** was proper, courts strictly construe the **removal** statute against finding jurisdiction, and the party invoking federal jurisdiction bears the burden of establishing that **removal** was appropriate; where doubt exists regarding the right to **remove** an action, it should be resolved in favor of remand to state court. Borreani v. Kaiser Foundation Hospitals, N.D.Cal.2012, 875 F.Supp.2d 1050. **Removal** of Cases 2; **Removal** of Cases 107(7)

Doubts about the propriety of **removal** are to be resolved in favor of remanding the case to state court. Cohn v. Charles, D.Md.2012, 857 F.Supp.2d 544. **Removal** of Cases 107(7)

Statute governing **removal** of state court actions to **federal court** must be strictly construed against **removal**, with all doubts resolved in favor of remand. Shupp v. Reading Blue Mountain, M.D.Pa.2012, 850 F.Supp.2d 490. **Removal** of Cases 2; **Removal** of Cases 107(7)

Because of the limited jurisdiction of **federal courts**, any doubts as to whether federal jurisdiction exists in a case **removed** to **federal court** must be resolved in favor of remand; as a consequence, if federal jurisdiction is doubtful, a remand to state court is necessary. Stein v. American Exp. Travel Related Services, D.D.C.2011, 813 F.Supp.2d 69. **Removal** of Cases 107(7)

Because **removal** raises significant federalism concerns, the **removal** statutes are strictly and narrowly construed, with any doubt resolved against **removal** and in favor of remand. Bourne v. Wal-Mart Stores, Inc., E.D.Tex.2008, 582 F.Supp.2d 828. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

The **removal** statute is strictly construed such that any doubts are resolved in favor of remand. Gerard Ange v. Templer, N.D.Cal.2006, 418 F.Supp.2d 1169. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

The **removal** statute must be construed narrowly, and all doubts should be resolved in favor of remand. In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation, E.D.Pa.2004, 352 F.Supp.2d 533. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Removal statute is strictly construed against **removal** and any doubt must be resolved in favor of remand. Johnson v. America Online, Inc., N.D.Cal.2003, 280 F.Supp.2d 1018. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Removal jurisdiction should be strictly construed because of significant federalism concerns that it raises; for this reason, **federal courts** must resolve any doubts regarding federal jurisdiction in favor of remanding to state court. Hannibal v. Federal Express Corp., E.D.Va.2003, 266 F.Supp.2d 466. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Removal statute is strictly construed, requiring remand to state court if any doubt exists over whether **removal** was proper. Alessi v. Beracha, D.Del.2003, 244 F.Supp.2d 354, on remand 849 A.2d 939. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Removal statutes are to be strictly construed with all doubts as to propriety of **removal** resolved in favor of remand. Miller v. PPG Industries, Inc., W.D.Ky.2002, 237 F.Supp.2d 756. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

---- Presumptions, construction

Courts should interpret the federal **removal** statute narrowly and presume that the plaintiff may choose his or her forum. Rutherford v. Merck & Co., Inc., S.D.Ill.2006, 428 F.Supp.2d 842. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

Courts should interpret **removal** statute narrowly and presume that plaintiff may choose his or her forum; any doubt regarding jurisdiction should be resolved in favor of states. Kenro, Inc. v. Fax Daily, Inc., S.D.Ind.1995, 904 F.Supp. 912, reconsideration denied 962 F.Supp. 1162. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

---- Subsections, construction

Subsec. (a) of this section relating to **removal** of causes providing that civil action of which district court has original jurisdiction is **removable** by defendants except as otherwise provided, must be read together with subsec. (b) of this section providing that any action except those founded on a claim or right arising under the Constitution, treaties, or laws of the United States shall be **removable** only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought. Monroe v. United Carbon Co., C.A.5 (La.) 1952, 196 F.2d 455. **Removal** Of Cases 45

Subsection of federal **removal** statute stating that a civil action otherwise **removable** solely on the basis of diversity jurisdiction may not be **removed** if any of the parties in interests properly joined and served as defendants is a citizen of the state in which such action is brought, provides a narrow carveout to the forum defendant rule to protect defendants against gamesmanship from plaintiffs who fraudulently join a defendant to improperly prevent **removal**; defendants who can successfully demonstrate that an in-state defendant is not an actual party in interest may still succeed in **removing** the case. Deutsche Bank National Trust Company as Trustee for American Home Mortgage Investment Trust 2007-1 v. Old Republic Title Insurance Group, Inc., D.Nev.2021, 532 F.Supp.3d 1004. **Removal** of Cases 45

Subsection of federal **removal** statute stating that a civil action otherwise **removable** solely on the basis of diversity jurisdiction may not be **removed** if any of the parties in interests properly joined and served as defendants is a citizen of the state in which such action is brought, provides a narrow carve-out to the forum defendant rule to protect defendants against gamesmanship from plaintiffs who fraudulently join a defendant to improperly prevent **removal**; defendants who can successfully demonstrate

that an in-state defendant is not an actual party in interest may still succeed in **removing** the case. Deutsche Bank National Trust Company as Trustee for American Home Mortgage Investment Trust 2007-1 v. Old Republic Title Insurance Group, Inc., D.Nev.2021, 532 F.Supp.3d 1004. **Removal** of Cases 45

Subsec. (c) of this section providing that whenever separate and independent claim or cause of action, which would be **removable** if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action entire case may be **removed** does not apply when entire action would be **removable** under subsec. (a) of this section setting forth jurisdictional requirements for **removal**. McKinney v. Rodney C. Hunt Co., W.D.N.C.1978, 464 F.Supp. 59. **Removal** Of Cases 58

Subsec. (a) of this section, providing for **removal** to federal district court of civil action of which federal district courts have original jurisdiction, and subsec. (b) of this section, providing that civil action of which federal district courts shall have original jurisdiction founded on claim or right arising under Constitution, treaties, or laws of United States shall be **removable** without regard to citizenship or residence, and that any other action shall be **removable** only if none of parties in interest properly joined and served as defendants is citizen of state in which action is brought, must be read together, and case must qualify for **removal** under both provisions or be remanded. Eriksen v. Moore Mill & Lumber Co., D.C.Or.1958, 157 F.Supp. 888. **Removal** Of Cases 45

Subsec. (b) of this section that unless the action arises under the Constitution, treaties or laws of the United States, the action shall be **removable** "only" if none of the defendants properly joined and served, are citizens of the state in which the action is brought is a part of this section and must be complied with as well as subsec. (a) of this section. Crawford v. East Asiatic Co., N.D.Cal.1957, 156 F.Supp. 571. **Removal** Of Cases 45

Subsec. (b) of this section relating to **removal** of causes, that "any other such action" shall be **removable** only if no defendant is a citizen of the state in which action is brought, is a limitation upon subsec. (a) providing that civil action of which district court has original jurisdiction is **removable** by defendants except as otherwise provided, and action not arising under U.S. Constitution or laws was not **removable** under subsec. (b) where defendants were residents of state where action was brought. Irvin Jacobs & Co. v. Levin, N.D.Ohio 1949, 86 F.Supp. 850, affirmed 180 F.2d 356. **Removal** Of Cases 45

Construction with other laws--Generally

Federal Public Readiness and Emergency Preparedness Act (PREP) did not preempt cause of action by administrator of nursing home resident's estate under Illinois Nursing Home Care Act, and thus suit did not present questions of federal law, as statutory ground for **removal**; PREP Act forbade liability under state law for injuries caused by use of "covered countermeasure," and created federal cause of action for injuries caused by "willful misconduct" in connection with covered countermeasures, but did not completely occupy field of health safety, while covered countermeasures included guidelines for use of masks and personal protection equipment, administrator's allegations that nursing home had too few nurses, that it permitted nurses to work when they were sick, and that it failed to isolate residents who showed signs of infection had nothing to do with "covered countermeasures," and complaint did not allege that face masks led to her resident's death. Martin v. Petersen Health Operations, LLC, C.A.7 (Ill.) 2022, 37 F.4th 1210. Health 107; **Removal** of Cases 25(1); States 18.15

State inmate did not bring his action against state and prison officials in any court of the United States, and thus inmate's status as three-strikes litigant within meaning of Prison Litigation Reform Act's (PLRA) three-strikes provision did not preclude § 1983 action against state and prison officials, where inmate brought action in state court, state courts were not included in statutory definition of "court of the United States," and defendants, rather than inmate, **removed** case from state to **federal court**. Mitchell v. Goings, C.A.5 (La.) 2022, 37 F.4th 169. Civil Rights 1454

Removal statute is the controlling authority for **removal**, and the All Writs Act cannot excuse compliance with the statutory requirements for **removal**. Ortiz-Bonilla v. Federacion de Ajedrez de Puerto Rico, Inc., C.A.1 (Puerto Rico) 2013, 734 F.3d 28. **Removal** of Cases 1; **Removal** of Cases 2

Removal of plaintiffs' wrongful-death and survival action against aircraft manufacturer and other defendants to **federal court**, under Multiparty, Multiforum Trial Jurisdiction Act (MMTJA), did not require unanimous consent of all defendants. Pettitt v. Boeing Co., C.A.7 (Ill.) 2010, 606 F.3d 340. **Removal** Of Cases 82

The statutory charter for the Federal Home Loan Mortgage Corporation (Freddie Mac), which provides that any civil or other action to which Freddie Mac is a party may at any time before the trial thereof be **removed** by Freddie Mac, does not give Freddie Mac the exclusive right to **remove** actions it has filed in state court, as would be an exception to general **removal** statute; the charter's language does not expressly limit the applicability of the general **removal** statute nor does it expressly limit the ability of other parties to **remove**, and instead, the charter merely appears to provide Freddie Mac more flexibility than it would otherwise have in determining when and how to **remove**. Federal Home Loan Mortg. Corp. v. Matassino, N.D.Ga.2012, 911 F.Supp.2d 1276. **Removal** of Cases 44

While the general **removal** statute is strictly construed to favor remand, the federal-agency **removal** statute is broadly construed to favor **removal**. Kinetic Systems, Inc. v. Federal Financing Bank, N.D.Cal.2012, 895 F.Supp.2d 983. **Removal** of Cases 2; **Removal** of Cases 21

Venue was governed by the **removal** statute, not the general venue statute, even though defendant challenging venue, who was named as a defendant in the initial state court lawsuit, was not served until after the case was **removed** to **federal court**; a state action was technically "brought" against the defendant, within the meaning of the **removal** statute, and no defendant had challenged the propriety of **removal**. Smith v. JP Morgan Chase Bank, N.A., S.D.W.Va.2010, 727 F.Supp.2d 476. **Removal** Of Cases 14

Party may not **remove** case that could have originally been brought in **federal court** under interpleader statute where there is not complete diversity. Federal Insurance Company v. Tyco International Ltd., S.D.N.Y.2006, 422 F.Supp.2d 357, on remand 2006 WL 5437283. **Removal** Of Cases 29

Nationwide service of process was available under ERISA's extraterritorial statute to establish personal jurisdiction over individual defendants in action that was **removed** to **federal court**, although state court lacked jurisdiction over those defendants. Nahigian v. Leonard, D.Mass.2002, 233 F.Supp.2d 151. **Removal** Of Cases 111

National Childhood Vaccine Injury Act did not completely preempt state law claims relating to vaccine-related injuries, and thus under artful pleading doctrine **removal** was not warranted; Congress could have created an exclusive federal remedy for vaccine-related injuries or death when it enacted the National Childhood Vaccine Injury Act, instead, however, it supplemented state tort remedies with the requirement that claims first be exhausted in the Court of Federal Claims prior to pursuing litigation in state court, thus, Congress recognized that a state court would likely have to apply federal law in considering whether a vaccine-related claim was covered by the National Childhood Vaccine Injury Act. Bertrand v. Aventis Pasteur Laboratories, Inc., D.Ariz.2002, 226 F.Supp.2d 1206. Antitrust And Trade Regulation 132; Assault And Battery 108; Health 607; Products Liability 230; **Removal** Of Cases 25(1); Sales 513; States 18.15

Communications Act did not completely preempt customers' claims under New Jersey law against cellular telephone company for breach of implied duty of good faith and fair dealing and unjust enrichment, arising from company's billing practices and, thus, claims were not **removable** from state court to **federal court** under complete preemption doctrine; neither customers nor company contended that claims were rooted in company's tariff filed with Federal Communications Commission (FCC), Congress did not give affirmative indication that Communications Act was to provide exclusive federal remedy for acts complained of in claims, and savings clauses were present in Act. DeCastro v. AWACS, Inc., D.N.J.1996, 935 F.Supp. 541, appeal dismissed 940 F.Supp. 692. **Removal** Of Cases 25(1); States 18.81; Telecommunications 1513

Venue in a case **removed** from state court to a federal district court is prescribed by the **removal** statute itself rather than by the general venue statute. Dunn v. Babco Textron, E.D.Tex.1995, 912 F.Supp. 231. **Removal** Of Cases 14

Case which involved common-law fraud and numerous related state law claims as well as Racketeer Influenced and Corrupt Organizations Act (RICO) and securities law claims was **removable**; case as a whole could not properly be characterized as a securities case within meaning of statute giving federal and state courts concurrent jurisdiction over securities claims and preventing **removal** of securities cases once brought in state court. Gallagher v. Donald, S.D.N.Y.1992, 803 F.Supp. 899, adhered to on reconsideration 805 F.Supp. 221. **Removal** Of Cases 49.1(1)

Cases construing this section are instructive in evaluating **removal** procedure under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. York Hannover Holding A.G. v. American Arbitration Ass'n, S.D.N.Y.1992, 794 F.Supp. 118. **Removal** Of Cases 19(1)

D.C.C.E.1981 § 45-1410 providing that a landlord may bring an ejection action to recover possession in Superior Court of District of Columbia did not create an exception to tenant's right to **remove** to **federal court** an action for damages, possession and waste, and an action solely for possession of real estate, where the parties were of diverse citizenship and the amount in controversy exceeded $10,000, because nothing in D.C.C.E.1981 § 45-1410 referred to **removal** or otherwise suggested Congress' intent to divest **federal courts** of diversity jurisdiction. Eckert v. Fitzgerald, D.C.D.C.1982, 550 F.Supp. 88. **Removal** Of Cases 11

Section 1442 of this title governing **removal** of civil action commenced in a state court against an officer of the United States or any agency thereof creates a jurisdictional right to **removal** quite separate from that of this section; generally, the limitations on **removal** under the latter are not applicable to **removal** under the former. Swan v. Community Relations-Social Development Commission, E.D.Wis.1974, 374 F.Supp. 9. **Removal** Of Cases 21

Conflict between this section and venue provision of § 94 of Title 12 once the action against national bank is **removed** must be resolved in favor of venue provision of, § 94 of Title 12. Tanglewood Mall, Inc. v. Chase Manhattan Bank (Nat. Ass'n), W.D.Va.1974, 371 F.Supp. 722, affirmed 508 F.2d 838, certiorari denied 95 S.Ct. 1954, 421 U.S. 965, 44 L.Ed.2d 452. **Removal** Of Cases 111

Section 1333 of this title granting district court's original jurisdiction, exclusive of state courts, of any civil case of admiralty or maritime jurisdiction is not the express exception to this section authorizing **removal** of any civil action brought in a state court of which district courts have original jurisdiction and does not bar **removal**. Nesti v. Rose Barge Lines, Inc., N.D.Ill.1971, 326 F.Supp. 170. **Removal** Of Cases 3; **Removal** Of Cases 11

Section 1442 of this title relating to **removal** of suits against federal officers confers on federal officers an independent jurisdictional right to **remove** either state civil action or criminal prosecution from state to **federal court**, wholly apart from this section. Camero v. Kostos, D.C.N.J.1966, 253 F.Supp. 331. **Removal** Of Cases 21

Section 1442 of this title is a jurisdictional grant to **federal court** in itself, in contradistinction to this section. Perez v. Rhiddlehoover, E.D.La.1965, 247 F.Supp. 65. **Removal** Of Cases 21

Since the phrase "cases arising under the constitution, treaties or laws of the United States" shall be **removable** found in subsec. (b) of this section is identical with the original jurisdictional language found in the § 1331 of this title and, this section functions only with reference to the original jurisdiction sections, the quoted phrase refers to the same class of cases covered by said § 1331. Crawford v. East Asiatic Co., N.D.Cal.1957, 156 F.Supp. 571. **Removal** Of Cases 18; **Removal** Of Cases 19(1)

Section 1702 of Title 12, providing that Federal Housing Administration may sue or be sued in any court of competent jurisdiction, state or federal, does not impliedly repeal this section with respect to such actions and they may be **removed**

from state to **federal** **courts**. James River Apartments, Inc. v. Federal Housing Administration, D.C.Md.1955, 136 F.Supp. 24. **Removal** Of Cases 3

Policy of nonremoval provision of § 77v of Title 15 must yield to policies of this section intending to assure that defendant entitled to federal forum for litigation of diversity claim or **removable** federal claim will not be deprived of such right by his adversary's joinder of nonremovable, separate and independent claim and, at same time, intending to assure that all claims which should be litigated together for reasons of judicial economy be litigated in same forum, but policies of this section do not require that suit which would be in personam one in forum of plaintiff's choosing become something entirely different if suit is **removed**. U.S. Industries, Inc. v. Gregg, D.C.Del.1973, 58 F.R.D. 469. **Removal** Of Cases 115

---- Bankruptcy, construction with other laws

When count of complaint against city and its departments and officials for administrative review under Illinois statute governing parking privileges for persons with disabilities had to be remanded to state court on grounds that state law predominated, all further proceedings in action would be stayed under *Pullman* principles, where issue as to whether plaintiff could challenge original issuance of underlying parking tickets as invalid because persons ticketing car had wrongfully ignored handicapped parking placard displayed in car was really the linchpin of all remaining claims for declaratory relief, for injunction, and for class relief. Badanish v. City of Chicago, N.D.Ill.1995, 895 F.Supp. 201. **Federal** **Courts** 2638

Automatic stay incident to bankruptcy proceedings of nonresident defendant did not prevent district court from remanding improperly **removed** breach of contract case to state court. County of Cook v. Mellon Stuart Co., N.D.Ill.1992, 812 F.Supp. 793. Bankruptcy 2095.14(2); Bankruptcy 2395

Construction with Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure, this title, govern an action only after it has been properly **removed** to the **federal** **court** from the state court and do not apply to the **removal** procedure itself. Resident Advisory Bd. v. Tate, E.D.Pa.1971, 329 F.Supp. 427. **Removal** Of Cases 89(1)

Section 2201 of this title, and rule 57, Federal Rules of Civil Procedure, this title, relating to declaratory judgments are not jurisdictional and do not create a case arising under Constitution or laws of United States within § 1331 of this title, giving district courts original jurisdiction of such cases or within this section. American Mfrs. Mut. Ins. Co. v. Manor Inv. Co., S.D.N.Y.1968, 286 F.Supp. 1007. Declaratory Judgment 274.1; **Removal** Of Cases 18; **Removal** Of Cases 19(1)

Purpose

Removal mechanism was not intended to effect wholesale dislocation in allocation of judicial business between state and **federal** **courts**. Boys Markets, Inc. v. Retail Clerks Union, Local 770, U.S.Cal.1970, 90 S.Ct. 1583, 398 U.S. 235, 26 L.Ed.2d 199. **Removal** Of Cases 1

Function of **removal** statute is to provide a simple means, uniformly applied irrespective of state rules, for defendants entitled to do so to **remove** actions from state to **federal** **court**. Berberian v. Gibney, C.A.1 (R.I.) 1975, 514 F.2d 790. **Removal** Of Cases 2

Purpose of **removal** statute provision stating that **federal** **court** is not precluded from exercising jurisdiction following **removal** because state court did not have jurisdiction is to avoid inefficient dismissals and refilings. Nahigian v. Leonard, D.Mass.2002, 233 F.Supp.2d 151. **Removal** Of Cases 111

Primary principle of **removal** jurisdiction is that defendant may initiate **removal** to federal district court for district in which state court action is pending, if **federal court** had original jurisdiction, unless act of Congress expressly provides otherwise. Hanna v. Fleetguard, Inc., N.D.Iowa 1995, 900 F.Supp. 1110. **Removal** Of Cases 11

Purpose of this section was to reduce number of cases that can be **removed** from state court. In re General Adjudication of All Rights to Use Water and Water Rights on Missouri River, State of S.D., D.C.S.D.1982, 531 F.Supp. 449. **Removal** Of Cases 2

Removal jurisdiction is not intended as device for easing into **federal court** claims which could not have been brought there initially. People of State of Cal. v. Beltz Travel Service, Inc., N.D.Cal.1974, 379 F.Supp. 948. **Removal** Of Cases 11

It is not purpose of this section to permit a defendant to "bootstrap" his way into **federal court** by his own pleadings. Bull v. Big Three, Inc., E.D.Okla.1974, 379 F.Supp. 41. **Removal** Of Cases 61(2)

Congress in enacting this chapter relating to **removal** of cases intended that the procedure for institution of lawsuit by service of a summons only should not be permitted to dilute the congressionally promulgated right of **removal**. Smith v. Seaboard Coast Line R. Co., D.C.S.C.1971, 327 F.Supp. 536. **Removal** Of Cases 1

Philosophy of doctrine governing **removal** to federal district court is to allow plaintiff to select state court if he wishes to do so. Urban Renewal Authority of City of Trinidad, Colo. v. Daugherty, D.C.Colo.1967, 271 F.Supp. 729. **Removal** Of Cases 1

It is policy and purpose of Congress to effect **removals** as early as possible and avoid unnecessary delay. Gilardi v. Atchison, T. & S. F. Ry. Co., N.D.Ill.1960, 189 F.Supp. 82. **Removal** Of Cases 79(1)

The purpose of **removal** legislation is to give a nonresident defendant who has been unwillingly brought into a state court, the right to **remove** to the presumably unprejudiced forum of the **federal court**. Browne v. Hartford Fire Ins. Co., N.D.Ill.1959, 168 F.Supp. 796. **Removal** Of Cases 1

The purpose of this section is to secure a tribunal presumably more impartial than court of state wherein one of parties to suit resides. Bradley v. Halliburton Oil Well Cementing Co., E.D.Okla.1951, 100 F.Supp. 913. **Removal** Of Cases 44

Common law

There is no common law right to **remove** an action from state court to **federal court**, and **removal** may be had only as authorized by Act of Congress. In re Stuart, W.D.Mich.1956, 143 F.Supp. 772. See, also, Rand v. State of Ark., D.C.Ark.1961, 191 F.Supp. 20. **Removal** Of Cases 1

Law governing

California's choice-of-law rules applied to determine which state's law should apply in diversity action brought by former student against residential treatment facility located in Utah, alleging she was sexually abused by an employee at facility, since action was initially filed in United States District Court for the Central District of California prior to transfer to United States District Court for the District of Utah. Gerson v. Logan River Academy, C.A.10 (Utah) 2021, 20 F.4th 1263. **Federal Courts** 3029(2)

Whether state-court litigation is properly characterized as an independent civil action subject to **removal** is essentially a matter of federal law, but to totally ignore the structure of state procedural law would reflect an overly-procrustean view. Jackson-Platts v. General Elec. Capital Corp., C.A.11 (Fla.) 2013, 727 F.3d 1127. **Federal Courts** 3025(5)

States cannot by definition or by characterization enlarge or narrow categories of cases subject to **removal**. Arthur v. E.I. DuPont de Nemours & Co., C.A.4 (W.Va.) 1995, 58 F.3d 121. **Federal Courts** 2019; **Removal** Of Cases 3

Federal law governs construction of **removal** statutes. Jones v. Roadway Exp., Inc., C.A.5 (Tex.) 1991, 931 F.2d 1086, rehearing denied 936 F.2d 789. **Federal Courts** 3025(5)

Whether a civil action is **removable** and has been properly **removed** is one for consideration of the **federal court** and is not controlled by state law. Stoll v. Hawkeye Cas. Co. of Des Moines, Iowa, C.A.8 (S.D.) 1950, 185 F.2d 96. **Federal Courts** 3002; **Removal** Of Cases 4

Venue for actions brought in state court and later **removed** to **federal court** is governed by **removal** statute, rather than general venue statute. McPhearson v. Anderson, E.D.Va.2012, 874 F.Supp.2d 573. **Removal** of Cases 14

State law governs whether service of process is properly effected if attempted prior to **removal**. McCoy v. Norfolk Southern Ry. Co., S.D.W.Va.2012, 858 F.Supp.2d 639. **Federal Courts** 3032; **Removal** Of Cases 114; **Removal** Of Cases 115

State law determines when an action is commenced for **removal** purposes. Riley v. Ohio Cas. Ins. Co., W.D.Ky.2012, 855 F.Supp.2d 662. **Removal** of Cases 79(1)

Federal law governs characterization of supplemental proceeding for purpose of **removal**. Estate of Jackson v. Ventas Realty, Ltd. Partnership, M.D.Fla.2011, 812 F.Supp.2d 1306. **Federal Courts** 3025(5)

The timeliness of **removal** is an issue of federal law. In re Asbestos Products Liability Litigation (No. VI), E.D.Pa.2011, 770 F.Supp.2d 736. **Removal** Of Cases 79(1)

Federal court with diversity-based jurisdiction over **removed** action applies the laws of the forum state in analyzing the underlying claims. PayoutOne v. Coral Mortg. Bankers, D.Colo.2009, 602 F.Supp.2d 1219. **Federal Courts** 3005

In assessing whether a plaintiff could possibly establish a claim against a non-diverse defendant, the district court must apply the law of the state in which the action was brought to determine whether case is **removable**. Bourne v. Wal-Mart Stores, Inc., E.D.Tex.2008, 582 F.Supp.2d 828. **Federal Courts** 3025(5)

Whether a party is a plaintiff or a defendant under the **removal** statute is question of federal statutory interpretation. Williamsburg Plantation, Inc. v. Bluegreen Corp., E.D.Va.2006, 478 F.Supp.2d 861. **Federal Courts** 3031(1); **Removal** Of Cases 2

Federal law determines which party is plaintiff and which party is defendant for purposes of determining whether party has right to **remove** case to **federal court**. Seminole County v. Pinter Enterprises, Inc., M.D.Fla.2000, 184 F.Supp.2d 1203. **Removal** Of Cases 44

Federal court is to look to federal law to determine whether elements of **removal** jurisdiction have been established under the applicable statutes, keeping in mind that **removal** statutes are strictly construed against **removal**. Brizendine v. Continental Cas. Co., N.D.Ala.1991, 773 F.Supp. 313. **Federal Courts** 3025(5)

Questions regarding this section are federal matter, and federal law, not state law, governs circumstances in which case may be **removed** to **federal court**. Feller v. National Enquirer, N.D.Ohio 1982, 555 F.Supp. 1114. **Federal Courts** 3025(5)

State procedural law does not control case **removed** to **federal court**, but where state law conflicts with federal law, in **removal** cases, federal law applies. Wright v. Central States, Southeast and Southwest Areas, Health and Welfare Fund, D.C.S.C.1977, 440 F.Supp. 1235. **Federal Courts** 3005

Federal courts should not look to state court classifications of parties or characterization of actions in determining whether **removal** is proper under federal law. Ford Motor Credit Co. v. Liles, W.D.Okla.1975, 399 F.Supp. 1282. **Removal** Of Cases 107(4)

Questions concerning **removal** of cases to **federal court** are to be resolved in light of federal law. Perini Corp. v. Orion Ins. Co., E.D.Cal.1971, 331 F.Supp. 453. **Removal** Of Cases 2

Federal law rather than state law determines when **removal** can occur. White v. Baltic Conveyor Co., D.C.N.J.1962, 209 F.Supp. 716. **Removal** Of Cases 3

Question of right to **remove** an action from state to **federal court** is controlled by federal rather than state law. Rock v. Manthei, W.D.Mo.1955, 129 F.Supp. 769. **Removal** Of Cases 3

Uniform application of section

While a state is free to establish such rules of practice for her own courts as she chooses, the federal **removal** statutes and United States Supreme Court decisions on **removal** are intended to have uniform nationwide application. Grubbs v. General Elec. Credit Corp., U.S.Tex.1972, 92 S.Ct. 1344, 405 U.S. 699, 31 L.Ed.2d 612. **Removal** Of Cases 2

There is federal interest in seeing that this chapter is applied uniformly to litigants in all states. Central of Georgia Ry. Co. v. Riegel Textile Corp., C.A.5 (Ala.) 1970, 426 F.2d 935. **Removal** Of Cases 2

This chapter was intended to be uniform in application, unaffected by local law definition or characterization of the subject matters to which it is to be applied or local designation of parties as plaintiff or defendant, and therefore chapter must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be **removed** from state to **federal court**. Chicago, R.I. & P.R. Co. v. Stude, C.A.8 (Iowa) 1953, 204 F.2d 116, rehearing denied 204 F.2d 954, certiorari granted 74 S.Ct. 46, 346 U.S. 810, 98 L.Ed. 338, affirmed 74 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 317, rehearing denied 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078. **Federal Courts** 3025(5)

It was the intention of Congress in enacting this section that it be uniformly applied throughout the country. Tool and Die Makers Lodge No. 78 Intern. Ass'n of Machinists AFL-CIO v. General Elec. Co. X-Ray Dept., E.D.Wis.1959, 170 F.Supp. 945. **Removal** Of Cases 2; **Removal** Of Cases 3

Orderly procedure and uniformity of practice has been the goal of all the **removal** acts. Barnes v. Parker, W.D.Mo.1954, 126 F.Supp. 649. **Removal** Of Cases 2

Statutory nature of section

It is familiar law that the right of **removal** being statutory, a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress. Great Northern Ry. Co. v. Alexander, U.S.Mont.1918, 38 S.Ct. 237, 246 U.S. 276, 62 L.Ed. 713. See, also, Little York Gold-Washing, etc., Co. v. Keyes, Cal.1878, 96 U.S. 199, 24 L.Ed. 656. **Removal** Of Cases 3

Removal jurisdiction of **federal** **courts** is derived entirely from statutory authorization of Congress. Libhart v. Santa Monica Dairy Co., C.A.9 (Cal.) 1979, 592 F.2d 1062. **Removal** Of Cases 1

A suit commenced in a state court must remain there until cause is shown under some act of Congress for its transfer. Self v. General Motors Corp., C.A.9 (Cal.) 1978, 588 F.2d 655. **Removal** Of Cases 1

The right of **removal** is statutory, and before a party may avail himself of it, he must show that he comes within provisions of this section. Edwards v. E.I. Du Pont De Nemours & Co., C.A.5 (Ga.) 1950, 183 F.2d 165. See, also, Crosby v. Paul Hardeman, Inc., C.A. 8 (Ark.) 1969, 414 F.2d 1; State of Ark. v. Howard, D.C.Ark.1963, 218 F.Supp. 626; Putterman v. Daveler, D.C.Del.1958, 169 F.Supp. 125. **Removal** Of Cases 16

Right of **removal** being statutory, suit commenced in state court must remain there until cause is shown for its transfer under some act of Congress. Sirois v. Business Exp., Inc., D.N.H.1995, 906 F.Supp. 722. **Removal** Of Cases 1

Statute allowing **removal** of actions in which federal district courts have original jurisdiction can be relied on for **removal** unless Congress has clearly provided differently for **removal** of the case. Wilkinson v. U.S., W.D.N.C.1989, 724 F.Supp. 1200. **Removal** Of Cases 11

Right of party to **remove** case from state to **federal** **court** is purely statutory right and, as such, is dependent upon will of Congress for its continued existence. Chase v. North American Systems, Inc., W.D.Pa.1981, 523 F.Supp. 378. **Removal** Of Cases 1

Right of **removal** is purely statutory, and, as congressionally imposed infringement on states' power to determine controversies in their courts, **removal** statutes must be strictly construed. Rembrant, Inc. v. Phillips Const. Co., Inc., S.D.Ga.1980, 500 F.Supp. 766. **Removal** Of Cases 1; **Removal** Of Cases 2

Removal jurisdiction is of an entirely statutory nature. Croy v. Buckeye Intern., Inc., D.C.Md.1979, 483 F.Supp. 402. **Removal** Of Cases 1

The right of **removal** is statutory and must be strictly construed so as to permit a **federal** **court** to encroach upon a state court's right to determine cases properly brought before the state court only with the express authority given by Congress. Lee v. Volkswagen of America, Inc., W.D.Okla.1976, 429 F.Supp. 5. **Removal** Of Cases 1

Removal jurisdiction is entirely statutory; absent an express statutory grant, there is no basis for **removal**. Strickland Transp. Co. v. Navajo Freight Lines, Inc., N.D.Tex.1961, 199 F.Supp. 108. **Removal** Of Cases 1

Jurisdiction of federal district court in **removal** action is grounded upon statutory enactment and is not to be defeated by whim or error of plaintiff in drafting his state process. Faucher v. St. Johnsbury Trucking Co., D.C.N.H.1951, 98 F.Supp. 152. **Removal** Of Cases 112

Mandatory remand

Removal that does not comply with express statutory requirements is defective, and case must be remanded to state court. May v. Board of County Com'rs for Cibola County, D.N.M.2013, 945 F.Supp.2d 1277. **Removal** of Cases 94; **Removal** of Cases 103

Mandatory **removal**

Party to state court action was not required to **remove** case to federal district court, rather than commencing separate declaratory judgment action, in order for district court to have jurisdiction. Government Employees Ins. Co. v. Simon, C.A.8 (Mo.) 1990, 917 F.2d 1144. **Removal** Of Cases 16

State authority

A state has no power to either directly or indirectly withhold, condition, or restrict the unfettered exercise of right of **removal** under this section. Fresquez v. Farnsworth & Chambers Company, C.A.10 (N.M.) 1956, 238 F.2d 709. **Removal** Of Cases 3

State procedural provisions cannot control privilege of **removal** granted by this section. Hill v. Branscum, W.D.Ark.1962, 208 F.Supp. 360. **Removal** Of Cases 3

The federal right of **removal** cannot be taken away, restricted or abridged by any state statute, and such right of **removal** is applicable to actions arising in intrastate business, as well as to actions arising in interstate business. Carson Const. Co. v. Fuller-Webb Const., D.C.Mont.1961, 198 F.Supp. 464. **Removal** Of Cases 3

State's procedural provisions could not control **removal** privilege granted by this section. Mitchell v. Southern Farm Bureau Cas. Ins. Co., W.D.Ark.1961, 192 F.Supp. 819. **Removal** Of Cases 3

A state cannot directly or indirectly punish or prohibit the exercise of the right of **removal** of case to federal district court. Tool and Die Makers Lodge No. 78 Intern. Ass'n of Machinists AFL-CIO v. General Elec. Co. X-Ray Dept., E.D.Wis.1959, 170 F.Supp. 945. **Removal** Of Cases 3

A state cannot constitutionally provide by statute an instrumentality whereby the right to **remove** a case to a federal tribunal can be waived. Valencia v. Stearns Roger Mfg. Co., D.C.N.M.1954, 124 F.Supp. 670. **Removal** Of Cases 3

A statute which in terms purports to impair the right to **remove** a cause on diversity grounds to **federal court** when **removal** is timely and diversity exists, is unconstitutional. Davila v. Hilton Hotels Intern., D.C.Puerto Rico 1951, 97 F.Supp. 32. **Removal** Of Cases 3

Claims brought by original plaintiff

Better reasoned position as to scope of **removal** statute limits **removal** to claims brought by original plaintiff. Luebbe v. Presbyterian Hospital in City of New York at Columbia-Presbyterian Medical Center, S.D.N.Y.1981, 526 F.Supp. 1162. **Removal** Of Cases 3

For civil action brought in state court to be **removed** by defendant to federal district court, basis for jurisdiction must inhere from plaintiff's claim in state court. Kerbow v. Kerbow, N.D.Tex.1976, 421 F.Supp. 1253. **Removal** Of Cases 25(1)

Suits against states

Foreign Sovereign Immunities Act's (FSIA) grant to foreign state defendants of right of **removal** is not an abrogation of states' right to assert Eleventh Amendment as defense to action by foreign state. Iberia Lineas Aereas De Espana v. Velez-Silva, D.Puerto Rico 1999, 59 F.Supp.2d 266. **Federal Courts** 2374(4)

Federal district court lacked jurisdiction over **removed** civil enforcement action brought by the People of the state of California alleging violations of state antitrust statute and state unfair competition statute, in which the state of California was a real party

in interest, in light of the Eleventh Amendment sovereign immunity granted to a state against suit in **federal court**. People of State of Cal. v. Steelcase Inc., C.D.Cal.1992, 792 F.Supp. 84. **Removal** Of Cases 41

Adequacy of state remedies

Homeowners' negligence and gross negligence claims under Texas law against subdivision developers and engineering firms that designed subdivision's storm water management features, arising out of damage to homes in Hurricane Harvey, did not require resolution of federal issues, as required to support federal question jurisdiction over state law claims, and thus homeowners' claims were not subject to **removal** to **federal court**; homeowners alleged that developers and firms failed to conform to standards of care applicable to professional engineers or developers, such duties existed under state law, and homeowners sought actual, compensatory, and punitive damages, which were remedies available under state-law based conception of negligence. Alexander v. Woodlands Land Development Company L.P., S.D.Tex.2018, 325 F.Supp.3d 786. **Federal Courts** 2217; **Federal Courts** 2350

Where state has provided adequate and ample avenues to challenge all allegedly offensive decisions as well as opportunity to contest complaint on merits, such as trial on merits and appellate remedies, including appeal to state's highest court and review from final state court determination to United States Supreme Court, there is no basis for using this section to abort or interrupt state trial. Whitestone Sav. and Loan Ass'n v. Romano, E.D.N.Y.1980, 484 F.Supp. 1324. **Removal** Of Cases 70

Progression in state court

Removal was no longer appropriate after defendants suffered adverse partial summary judgment shortly before trial, as defendants had shown clear intent to litigate in state court and **removal** on heels of adverse ruling suggested intent to use **removal** as de facto appeal. Queen v. Dobson Power Line Const. Co., E.D.Ky.2006, 414 F.Supp.2d 676. **Removal** Of Cases 17

Removal petition was rejected based on extent to which action had progressed in state court, in that **removal** was sought only after proceeding before state trial and appellate courts on motion to dismiss for lack of subject matter jurisdiction and after summary judgment motion was denied by the trial court; to maintain suit in **federal court** after extensive motion practice conducted in state court would promote a duplicative and wasteful policy of judicial administration and would provide defendant with a "second bite at the apple." Boland v. Bank Sepah-Iran, S.D.N.Y.1985, 614 F.Supp. 1166. **Removal** Of Cases 81

Direct and important interest served

To warrant **removal** of case to **federal court**, federal interest to be served by providing federal forum should be direct and important, not conjectural. Lance Intern., Inc. v. Aetna Cas. & Sur. Co., S.D.N.Y.1967, 264 F.Supp. 349. **Removal** Of Cases 19(1)

Pending cases in federal court

That a related case was pending in **federal court** was not in itself sufficient grounds for **removal**. Fabricius v. Freeman, C.A.7 (Ill.) 1972, 466 F.2d 689. **Removal** Of Cases 1

Mere pendency of unacted upon motion to consolidate in state court present action with action which was **removed** to **federal court** did not make present claim **removable**. North American Van Lines, Inc. v. Coleman, N.D.Ill.1986, 633 F.Supp. 632. **Removal** Of Cases 5

State action based on alleged infringement of state trademark was not **removable** because it raised identical issues to those raised in a case pending before **federal court**; such pending litigation did not confer "original" jurisdiction on court. Gardner v. Clark Oil & Refining Corp., E.D.Wis.1974, 383 F.Supp. 151, 184 U.S.P.Q. 344. **Removal** Of Cases 11

Pending cases in state court

Case in state court that had been dismissed for want of prosecution on previous day was "pending" there, as required for **removal**; order to dismiss was not final and appealable order on day of **removal**, but, instead, was merely interlocutory order, and it easily could have been vacated had case remained in Illinois state court. Yassan v. J.P. Morgan Chase and Co., C.A.7 (Ill.) 2013, 708 F.3d 963. **Removal** of Cases 4

Accepting **removal** of patient's state-law action against manufacturer of spinal fusion device on substantial federal question jurisdiction grounds would upset the balance between state and federal judicial responsibilities, given that the device alone had provoked over 800 lawsuits, an estimated 4,500 claimants had not yet filed suit, and manufacturer's legal analysis as to why claims based on its device implicated federal interest would apply, minimally, to all medical devices. Carmine v. Poffenbarger, E.D.Va.2015, 154 F.Supp.3d 309. **Removal** of Cases 19(1)

Prohibition against prosecution of state claim

A federal prohibition against prosecution of a state claim is not a basis for **removal** to the **federal court**. Bailey v. Logan Square Typographers, Inc., C.A.7 (Ill.) 1971, 441 F.2d 47, 169 U.S.P.Q. 322. **Removal** Of Cases 19(1)

Louisiana statute that prohibits inclusion in insurance contracts that were delivered or issued for delivery in Louisiana and that cover subjects located, resident, or to be performed in Louisiana of conditions, stipulations, or agreements that require contract to be construed according to laws of any other state or country, except as necessary to meet requirements of motor vehicle financial responsibility laws, and that deprive Louisiana courts of jurisdiction or venue of action against insurer does not reverse-preempt the federal **removal** statute pursuant to the McCarran-Ferguson Act. Muriel's New Orleans, LLC v. State Farm Fire and Casualty Company, E.D.La.2020, 2020 WL 6779328. **Removal** of Cases 3

Jurisdiction of removal court--Generally

Due regard for the rightful independence of state governments, which should actuate **federal courts**, required that they scrupulously confine their own jurisdiction to the precise limits which former § 71 of this title defined. Shamrock Oil & Gas Corp. v. Sheets, U.S.Tex.1941, 61 S.Ct. 868, 313 U.S. 100, 85 L.Ed. 1214. See, also, Weatherford v. Radcliffe, D.C.S.C.1945, 63 F.Supp. 107. **Federal Courts** 2032

District Court did not abuse its discretion by reviewing notice of **removal** for improper joinder, rather than procedural misjoinder, in action brought by insured law firm against two insurers, seeking defense and indemnity in connection with underlying action arising from fee dispute with former clients; relevant circuit precedent emphasized substantive viability of claims, not procedural questions like party joinder, non-diverse insurer raised both procedural misjoinder and improper joinder in its notice of **removal**, and cited relevant precedent which addressed both forms of joinder. Ticer v. Imperium Insurance Company, C.A.5 (Tex.) 2021, 20 F.4th 1040. **Removal** of Cases 94

The District Court did not have federal question or diversity jurisdiction over energy and utility auditing and consulting firm's state-law breach of contract claim against city, and thus **removal** to federal district court was improper, where the action involved a contract dispute that presented only state-law concerns, and both parties were citizens of Louisiana. Energy Management Services, LLC v. City of Alexandria, C.A.5 (La.) 2014, 739 F.3d 255. **Removal** of Cases 19(1); **Removal** of Cases 26

State law cause of action by the Enforcement Section of the Massachusetts Securities Division against registered broker dealer that provided services to holders of individual retirement accounts (IRAs), for allegedly failing to comply with its own internal policies in hosting incentivized sales contests for employees, and for failing to adequately supervise employees, was one which could be resolved without any analysis of Department of Labor rule on which broker dealer's internal policy was based; thus, it was not one over which district court could exercise "federal question" jurisdiction following **removal**, pursuant to "federal ingredient" doctrine. Enforcement Section of Massachusetts Securities Division of Office of Secretary of Commonwealth v. Scottrade, Inc., D.Mass.2018, 327 F.Supp.3d 345. **Removal** of Cases 25(1)

If **federal** **court** has jurisdiction over suit **removed** from state court, it is required to exercise its jurisdiction. West Virginia ex rel. McGraw v. Fast Auto Loans, Inc., N.D.W.Va.2013, 918 F.Supp.2d 551, on remand 2014 WL 2623958. **Federal** **Courts** 2574; **Removal** Of Cases 111

Under statute providing for the **removal** of certain "civil actions" commenced in state courts if the district courts of the United States have original jurisdiction, a district court is precluded from exercising jurisdiction if there is any doubt as to the right of **removal** in the first instance, and any doubts as to the right of **removal** must be resolved in favor of remanding to the state court. F.B.I. v. Superior Court of Cal., N.D.Cal.2007, 507 F.Supp.2d 1082. **Removal** Of Cases 11; **Removal** Of Cases 102; **Removal** Of Cases 107(7)

Retaining jurisdiction based on diversity was proper upon liability insurer's **removal** of case in order to obtain declaratory judgment in suit by insureds to recover for refusal to defend and indemnify; there was no pending state action. International Broth. of Elec. Workers Local 1357 v. American Intern. Adjustment Co., Inc., D.Hawai'i 1997, 955 F.Supp. 1218, affirmed 142 F.3d 443. **Removal** Of Cases 29

Federal **court** may entertain **removed** case only if court has subject matter jurisdiction over **removed** case. Kenro, Inc. v. Fax Daily, Inc., S.D.Ind.1995, 904 F.Supp. 912, reconsideration denied 962 F.Supp. 1162. **Removal** Of Cases 11

Because **removal** jurisdiction raises significant federalism concerns, **removal** jurisdiction is strictly construed. Handyman Network, Inc. v. Westinghouse Savannah River Co., Inc., D.S.C.1994, 868 F.Supp. 151. **Removal** Of Cases 2

Removal jurisdiction attaches at time of **removal** and subsequent events cannot deprive court of jurisdiction. Harding v. U.S. Figure Skating Ass'n, D.Or.1994, 851 F.Supp. 1476. **Removal** Of Cases 43

Removal jurisdiction may be broader than original jurisdiction. National Audubon Soc. v. Department of Water & Power of City of Los Angeles, E.D.Cal.1980, 496 F.Supp. 499. **Removal** Of Cases 95

Not only is **removal** jurisdiction under this section not coterminous with original jurisdiction but is broader than original jurisdiction. Herrmann v. Braniff Airways, Inc., S.D.N.Y.1969, 308 F.Supp. 1094. **Removal** Of Cases 1

Federal **courts** must scrupulously confine their own jurisdiction within precise limits which this section and §§ 1446 and 1447 of this title pertaining to **removal** of cases has defined. Couch v. White Motor Co., W.D.Mo.1968, 290 F.Supp. 697. **Removal** Of Cases 107(4)

Federal **courts** should scrupulously confine their own jurisdiction to the precise limits which this section has defined, but they should likewise not shirk their jurisdiction. Wayrynen Funeral Home, Inc. v. J.G. Link & Co., D.C.Mont.1968, 279 F.Supp. 803. **Removal** Of Cases 1

On occasions, **removal** jurisdiction may be narrower than original jurisdiction, but that is so only in cases where there has been clear congressional enactment to that effect. Luce & Co. v. Alimentos Borinquenos, S.A., D.C.Puerto Rico 1967, 276 F.Supp. 94. **Removal** Of Cases 11

Removal jurisdiction of **federal courts** is identical with their original jurisdiction upon which their **removal** jurisdiction is predicated. Wilder v. Brace, D.C.Me.1963, 218 F.Supp. 860. **Removal** Of Cases 1

The term "jurisdiction" as used in this section means power to entertain the suit, consider merits, and render binding decision thereon. Richman Bros. Co. v. Amalgamated Clothing Workers of America, N.D.Ohio 1953, 114 F.Supp. 185, reconsideration denied 116 F.Supp. 800. See, also, Food Basket, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, A.F. of L., D.C.Ky.1954, 124 F.Supp. 463. **Removal** Of Cases 1

The trend of decisional law is to restrict and limit the jurisdiction of **federal court** on **removal** from state court. Cudney v. Midcontinent Airlines, E.D.Mo.1951, 98 F.Supp. 403. **Removal** Of Cases 111

---- Original jurisdiction, jurisdiction of removal court

District Court did not have original jurisdiction over city residents' action against quarry owner and operator, and several trucking companies, asserting state law tort claims for private nuisance, intentional infliction of emotional distress, and negligence per se, and, thus, ancillary jurisdiction could not provide the jurisdiction necessary to qualify for **removal** to protect the Court's earlier permanent injunction enjoining city from prohibiting all truck traffic through city. Baker v. Martin Marietta Materials, Inc., C.A.8 (Mo.) 2014, 745 F.3d 919, rehearing and rehearing en banc denied. **Federal Courts** 2546; **Removal** of Cases 11

Fact that special levy was assessed to pay for new sewer overflow retention treatment basin required under orders entered in federal environmental litigation did not give federal district court **removal** jurisdiction over state-law challenge to assessment. Ahearn v. Charter Township of Bloomfield, C.A.6 (Mich.) 1996, 100 F.3d 451, appeal after remand from **federal court** 597 N.W.2d 858, 235 Mich.App. 486, appeal denied 616 N.W.2d 686, 462 Mich. 866. **Removal** Of Cases 19(1)

If an action contains claims barred by sovereign immunity, it cannot be **removed** from state courts to federal forum because it does not meet requirements for **removal**--it is not within original jurisdiction of the district courts. Gorka by Gorka v. Sullivan, C.A.7 (Ind.) 1996, 82 F.3d 772, rehearing and suggestion for rehearing en banc denied. **Removal** Of Cases 11

Requirement that federal district court would have had original jurisdiction over case is jurisdictional prerequisite to **removal** that is absolute and non-waivable. Brown v. Francis, C.A.3 (Virgin Islands) 1996, 75 F.3d 860, on remand 1999 WL 359185. **Removal** Of Cases 11

Action that contains claims barred by sovereign immunity, whether rooted in Eleventh Amendment or in *Hans* doctrine that bars **federal court** from hearing claims by citizens against their home states, cannot, in whole or in part, be **removed** from state court without state's consent as action within district court's original jurisdiction. Frances J. v. Wright, C.A.7 (Ill.) 1994, 19 F.3d 337, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 204, 513 U.S. 876, 130 L.Ed.2d 134. **Removal** Of Cases 11

Suit may be **removed** to **federal court** under this section only if it could have been brought there originally. Sullivan v. First Affiliated Securities, Inc., C.A.9 (Cal.) 1987, 813 F.2d 1368, certiorari denied 108 S.Ct. 150, 484 U.S. 850, 98 L.Ed.2d 106. **Removal** Of Cases 11

"Original jurisdiction" to which this section refers can rest with **federal courts** because of diversity of citizenship between parties, because claim arises under federal law, or by virtue of some other explicit grant of jurisdiction. Powers v. South Central United Food & Commercial Workers Unions and Employers Health & Welfare Trust, C.A.5 (Tex.) 1983, 719 F.2d 760. **Removal** Of Cases 11

Lack of subject-matter jurisdiction is defect in initial **removal** of case under this section since such **removal** is premised on district court's having original jurisdiction over case. IMFC Professional Services of Florida, Inc. v. Latin American Home Health, Inc., C.A.5 (Fla.) 1982, 676 F.2d 152. **Removal** Of Cases 11

Two requisites for **removal** of state court action to **federal court** are that action was properly commenced in state court and that action could have been originally commenced in **federal court**. Nuclear Engineering Co. v. Scott, C.A.7 (Ill.) 1981, 660 F.2d 241, certiorari denied 102 S.Ct. 1622, 455 U.S. 993, 71 L.Ed.2d 855. **Removal** Of Cases 10; **Removal** Of Cases 11

In the absence of a specific statutory exception, a **federal court** can exercise **removal** jurisdiction over a case only if it would have had jurisdiction over it as originally brought by the plaintiff. Snow v. Ford Motor Co., C.A.9 (Cal.) 1977, 561 F.2d 787. **Removal** Of Cases 11

A case which originally may be brought in federal district court is generally **removable** upon petition. PAAC v. Rizzo, C.A.3 (Pa.) 1974, 502 F.2d 306, certiorari denied 95 S.Ct. 780, 419 U.S. 1108, 42 L.Ed.2d 804. **Removal** Of Cases 11

District court did not have original jurisdiction over seaman's general maritime claims against vessel owner for unseaworthiness, maintenance, cure, and lost wages, and thus, **removal** was not appropriate, where seaman originally brought action in Washington state court, such that claims were necessarily brought at law rather than in admiralty, district court did not have subject matter jurisdiction over general maritime claims brought at law, fact that claims implicated general maritime law did not establish federal question jurisdiction, both seaman and vessel owner were residents of Washington, precluding diversity jurisdiction, and even if seaman was not resident of Washington, forum defendant rule would have prevented vessel owner from **removing** Washington state court action on basis of diversity. Coronel v. AK Victory, W.D.Wash.2014, 1 F.Supp.3d 1175. Admiralty 2; **Removal** of Cases 11; **Removal** of Cases 19(5); **Removal** of Cases 29; **Removal** of Cases 45

A prerequisite for **removal** jurisdiction is that the court has the power to exercise original jurisdiction. Town of Southold v. Go Green Sanitation, Inc., E.D.N.Y.2013, 949 F.Supp.2d 365. **Removal** of Cases 11

Only state-court actions that originally could have been filed in **federal court** may be **removed** to **federal court** by the defendant. Holmes v. Acceptance Cas. Ins. Co., E.D.Tex.2013, 942 F.Supp.2d 637. **Removal** of Cases 11; **Removal** of Cases 44

If the case is within the original jurisdiction of the district court, **removal** is proper so long as the defendant has complied with the procedural requirements for **removal**. Merced Irr. Dist. v. County of Mariposa, E.D.Cal.2013, 941 F.Supp.2d 1237. **Removal** of Cases 11

Any state court civil action over which a **federal court** would have original jurisdiction may be **removed** from state to **federal court**; the **removing** party bears the burden of showing that subject matter jurisdiction exists and that the **removal** procedure was properly followed. Goffney v. Bank of America, N.A., S.D.Tex.2012, 897 F.Supp.2d 520. **Removal** of Cases 11; **Removal** of Cases 107(7)

Removal of state court action to **federal court** is proper only if **federal court** has original jurisdiction; absent diversity jurisdiction, federal question must be present in order for court to exercise jurisdiction. Sheehan v. Broadband Access Services, Inc., D.R.I.2012, 889 F.Supp.2d 284. **Removal** of Cases 11; **Removal** of Cases 18; **Removal** of Cases 19(1)

A defendant may **remove** an action originally instituted in state court whenever the **federal court** would have original jurisdiction over the matter. Shupp v. Reading Blue Mountain, M.D.Pa.2012, 850 F.Supp.2d 490. **Removal** of Cases 11

Defendant may properly **remove** to federal district court civil action originally brought in state court, so long as federal district court would have original jurisdiction over matter; in doing so, **removing** defendant bears burden of establishing that jurisdiction

exists. In re Processed Egg Products Antitrust Litigation, E.D.Pa.2011, 836 F.Supp.2d 290, entered 2011 WL 6396446. **Removal** of Cases 11; **Removal** of Cases 44; **Removal** of Cases 107(7)

Only state-court actions that originally could have been filed in **federal court** may be **removed** to **federal court** by defendant, and absent diversity of citizenship, federal question jurisdiction is required. Hannibal v. Federal Express Corp., E.D.Va.2003, 266 F.Supp.2d 466. **Removal** Of Cases 11; **Removal** Of Cases 19(1); **Removal** Of Cases 26

A civil action is **removable** only if plaintiffs could have originally brought the action in **federal court**. Russell v. Sprint Corp., D.Kan.2003, 264 F.Supp.2d 955. **Removal** Of Cases 11

Removal is proper if the federal district court has original jurisdiction over an action brought in state court. Tunica-Biloxi Indians of Louisiana v. Pecot, W.D.La.2003, 248 F.Supp.2d 576. **Removal** Of Cases 11

Defendant in civil action filed in state court may **remove** case to **federal court** only if it could have been brought in **federal court** originally. Oxendine v. Merck and Co., Inc., D.Md.2002, 236 F.Supp.2d 517, on remand 2003 WL 24258219. **Removal** Of Cases 11

District court would not have had exclusive jurisdiction over action by lessee of tribal trust lands challenging Colorado Oil and Gas Conservation Commission (COGCC) decision allowing recompletion of oil and gas wells on tribal trust land and, thus, district court did not have subject matter jurisdiction; state court did not have jurisdiction over claim before it was **removed** to **federal court**. Burlington Resources Oil & Gas Co. v. Colorado Oil and Gas Conservation Com'n Dept. of Natural Resources, D.Colo.1997, 986 F.Supp. 1351. **Removal** Of Cases 10; **Removal** Of Cases 13

To be **removable**, case must be one that originally could have been filed in **federal court**. Calloway v. Union Pacific R. Co., E.D.Mo.1996, 929 F.Supp. 1280. **Removal** Of Cases 11

Action that could not have been filed in **federal court** because of lack of "original jurisdiction" may not be **removed** to **federal court**. 5757 North Sheridan Road Condominium Ass'n v. Local 727 of Intern. Broth. of Teamsters, N.D.Ill.1994, 864 F.Supp. 74. **Removal** Of Cases 11

By statute, Congress has provided litigants with power to **remove** civil action brought in state court to **federal court**, even though state court is fully competent to decide issues of federal law, so long as case comes within original jurisdiction of **federal court** such that it could have been brought in **federal court** ab initio. Drake v. Cheyenne Newspapers, Inc., D.Wyo.1994, 842 F.Supp. 1403. **Removal** Of Cases 11

Removal from state court to **federal court** is appropriate when **federal court** would have had original jurisdiction over plaintiff's action at time of **removal**. Stanley v. Exxon Corp., E.D.Pa.1993, 824 F.Supp. 52. **Removal** Of Cases 11

State court action is not **removable** to **federal court** if the action could not have originally been brought in **federal court**; thus, **removal** is proper only where original diversity or federal question jurisdiction is present. Stewart v. American Airlines, Inc., S.D.Tex.1991, 776 F.Supp. 1194. **Removal** Of Cases 11

Even if diversity jurisdiction exists, **removal** is proper only if the court had original jurisdiction of the matter. Glen 6 Associates, Inc. v. Dedaj, S.D.N.Y.1991, 770 F.Supp. 225. **Removal** Of Cases 11

State claims against Commonwealth of Massachusetts based on actions of state troopers in allegedly shooting victim were not within original jurisdiction of **federal courts** and were not **removable**. Handelman-Smith v. Peck, D.Mass.1990, 762 F.Supp. 1520. **Removal** Of Cases 11

Where federal district court did not have original jurisdiction to entertain suit against State because of the Eleventh Amendment, suit in which State and state officials, as well as private parties, were named as defendants could not be **removed**. Simmons v. State of Cal., Dept. of Indus. Relations, Div. of Labor Standards Enforcement, E.D.Cal.1990, 740 F.Supp. 781. **Removal** Of Cases 11

Generally, complaint may not be **removed** from state court to **federal court** unless it could have been filed originally in **federal court**. Charter Medical Corp. v. Friese, N.D.Ga.1989, 732 F.Supp. 1160. **Removal** Of Cases 11

District court retains jurisdiction over those cases **removed** from state court in which the district court would have had original jurisdiction. Krantz v. Boneck, D.C.Nev.1984, 599 F.Supp. 785. **Removal** Of Cases 11

This section governing cases arising under federal law does not provide an independent basis for **federal court** jurisdiction, but merely provides for **removal** to **federal court** of any cases over which court would have had original jurisdiction. West v. Missouri Bd. of Law Examiners, E.D.Mo.1981, 520 F.Supp. 159, affirmed 676 F.2d 702. **Federal Courts** 2211; **Removal** Of Cases 2

In general, an action is **removable** to **federal court** only if it might have been brought there originally. Thornton v. Allstate Ins. Co., E.D.Mich.1980, 492 F.Supp. 645. **Removal** Of Cases 11

A defendant may always **remove** an action of which the district courts have general jurisdiction. Communications Workers of America v. Pacific Tel. and Tel. Co., C.D.Cal.1978, 462 F.Supp. 736. **Removal** Of Cases 11

For an action to be **removable**, it is required that it be within original jurisdiction of **federal courts**, and additionally, that it be within subject matter jurisdiction of state court where it was originally filed. Typh, Inc. v. Typhoon Fence of Pennsylvania, Inc., E.D.Pa.1978, 461 F.Supp. 994. **Removal** Of Cases 10; **Removal** Of Cases 11

In order to **remove** an action from state to **federal court** under this section, it is first necessary that the action could have originally been brought in a **federal court**. Shelly v. Com. of Pa., M.D.Pa.1978, 451 F.Supp. 899. **Removal** Of Cases 107(7)

In order that **removal** jurisdiction could obtain, the actions were required to be such that they could have been brought in **federal court** originally. Housing Authority of Dauphin County v. Danner, M.D.Pa.1978, 448 F.Supp. 152.

Civil action brought in state court can be **removed** by defendants to federal district court only where the **federal court** would have had jurisdiction of action had it been brought originally in the **federal court**. Kerbow v. Kerbow, N.D.Tex.1976, 421 F.Supp. 1253. **Removal** Of Cases 11

Where a state court action could have originally been brought in **federal court**, it may be **removed** to **federal court**. Leonardis v. Local 282 Pension Trust Fund, E.D.N.Y.1975, 391 F.Supp. 554. **Removal** Of Cases 11

Only cases that could have been brought originally in **federal court** may be **removed** from state court. Carway v. Progressive County Mut. Ins. Co., S.D.Tex.1995, 183 B.R. 769. **Removal** Of Cases 11

---- Concurrent jurisdiction, jurisdiction of removal court

While IDEA permits suits to be brought in state court, fact that the IDEA provides the plaintiff with the choice of state or **federal court** does not preclude the **removal** of the resulting action to **federal court**. Ullmo ex rel. Ullmo v. Gilmour Academy, C.A.6 (Ohio) 2001, 273 F.3d 671. **Removal** Of Cases 3

Fact that both state and **federal** **courts** possess concurrent jurisdiction over Racketeer Influenced and Corrupt Organizations Act (RICO) claims does not prohibit defendant from properly **removing** case to **federal** **court** so long as main requirement under federal **removal** statute is met, i.e., that district court has original jurisdiction over matter, regardless of court in which complainant first initiated action. State of Tenn. ex rel. Pierotti v. A Parcel of Real Property Municipally Known as 777 N. White Station Road, Memphis, Tenn., W.D.Tenn.1996, 937 F.Supp. 1296. **Removal** Of Cases 13

Fact that Individuals with Disabilities Education Act provides plaintiff with choice of state or **federal** **court** does not preclude **removal** of resulting action to **federal** **courts**. Fayetteville Perry Local School Dist. v. Reckers By and Through Reckers, S.D.Ohio 1995, 892 F.Supp. 193. **Removal** Of Cases 13

Generally, absent an express provision to the contrary, **removal** right should be respected when there is concurrent jurisdiction. Yurcik v. Sheet Metal Workers' Intern. Ass'n, S.D.N.Y.1995, 889 F.Supp. 706. **Removal** Of Cases 13

Mere concurrent jurisdiction with state court is not enough to withstand **removal** on original jurisdiction grounds. Gleichauf v. Ginsberg, S.D.W.Va.1994, 859 F.Supp. 229. **Removal** Of Cases 101.1

State court's concurrent jurisdiction over complaint did not bar its **removal**; moreover, pendency of parallel federal suit did not support remand. Pettit v. Consolidated Rail Corp., N.D.Ind.1991, 765 F.Supp. 508. **Removal** Of Cases 13; **Removal** Of Cases 101.1

Concurrent jurisdiction of state and **federal** **courts** does not bar **removal**. Hummel v. Kamehameha Schools/Bernice Pauahi Bishop Estate, D.Hawai'i 1990, 749 F.Supp. 1023. **Removal** Of Cases 13

Concurrent state and federal jurisdiction over actions to review decisions in food stamp cases does not bar **removal** of case from state to **federal** **court**. Warren v. U.S., E.D.Ky.1990, 738 F.Supp. 212, affirmed 932 F.2d 582, 121 A.L.R. Fed. 839. **Removal** Of Cases 19(1)

Existence of concurrent jurisdiction, standing alone, is insufficient to defeat right to **removal** granted defendants under statute. Aben v. Dallwig, E.D.Mich.1987, 665 F.Supp. 523. **Removal** Of Cases 13

Mere fact that concurrent jurisdiction of state and **federal** **courts** exist under civil rights statute does not prohibit defendant from properly **removing** case to **federal** **court** so long as main requirement under federal **removal** statute is met; namely, that district court have original jurisdiction over matter, regardless in which court complainant initiated action. Spencer v. South Florida Water Management Dist., S.D.Fla.1986, 657 F.Supp. 66. **Removal** Of Cases 11; **Removal** Of Cases 13

Federal **removal** statutes expressly contemplate concurrent jurisdiction in all cases eligible for **removal**, and original jurisdiction in state court is prerequisite for **federal** **court** to acquire derivative jurisdiction by **removal**. Mercy Hosp. Ass'n v. Miccio, E.D.N.Y.1985, 604 F.Supp. 1177. **Removal** Of Cases 111

Jurisdictional provisions of National Flood Insurance Act, § 4001 et seq. of Title 42, conferred concurrent jurisdiction on state and **federal** **courts** and not exclusive jurisdiction on **federal** **court**; thus, since claim under the Act could properly be filed in Massachusetts state court, federal district court had subject-matter jurisdiction over the claim upon its **removal**. Kelly v. Director, Federal Emergency Management Agency, D.C.Mass.1981, 549 F.Supp. 8. Courts 489(1); **Removal** Of Cases 10

For purposes of this section which provides in pertinent part that any civil action of which the district courts have "original jurisdiction" shall be **removable** without regard to the citizenship or residence of the parties, "original jurisdiction" in **federal** **court** does not mean exclusive jurisdiction and the existence of concurrent state and federal jurisdiction does not operate to defeat a defendant's right to **remove** to **federal** **court**. DiAntonio v. Pennsylvania State University, M.D.Pa.1978, 455 F.Supp. 510. **Removal** Of Cases 11

That there was concurrent state court and **federal court** jurisdiction over subject matter of action wherein discharged employee sought reinstatement to his position as tractor-trailer operator, sought damages for wages and fringe benefits lost from date of his alleged wrongful discharge, sought punitive damages and sought to have grievance committee, which was provided for under collective bargaining agreement and which was composed of representatives of employer and union, to be required to hold hearing on grievance filed by employee did not render **removal** of action from state court to **federal court** improper. Sheeder v. Eastern Express, Inc., W.D.Pa.1974, 375 F.Supp. 655. **Removal** Of Cases 19(5)

Concurrent jurisdiction among tribunals does not imply right of defendant to **remove** action within those forums but only gives choice to suitor to sue in one of those forums. Volkswagen De Puerto Rico v. Labor Relations Bd. of Puerto Rico, D.C.Puerto Rico 1970, 331 F.Supp. 1043, affirmed 454 F.2d 38. **Removal** Of Cases 4

Existence of concurrent state and federal jurisdiction does not operate to defeat defendant's right of **removal** to **federal court**. La Chemise Lacoste v. Alligator Co., D.C.Del.1970, 313 F.Supp. 915, 165 U.S.P.Q. 766. See, also, Leonardis v. Local 282 Pension Trust Fund, D.C.N.Y.1975, 391 F.Supp. 554. **Removal** Of Cases 19(1)

---- Cure of jurisdiction, jurisdiction of removal court, generally

Any initial jurisdictional defect in **removal** was cured when plaintiff amended her complaint to plainly allege subject-matter jurisdiction in context of her ERISA claims. Fernandez-Vargas v. Pfizer, C.A.1 (Puerto Rico) 2008, 522 F.3d 55. **Removal** Of Cases 25(1)

State claim may be recharacterized as federal claim establishing federal question jurisdiction and permitting **removal** to **federal court** in only two circumstances, when Congress expressly so provides or when federal statute wholly displaces state law cause of action through complete preemption; third exception may exist when complaint raises substantial question of federal law. Sheehan v. Broadband Access Services, Inc., D.R.I.2012, 889 F.Supp.2d 284. **Removal** of Cases 25(1)

Shippers' post-**removal** assertion of federal claims under Carmack Amendment, which preempted state-law claims arising from failures in interstate transportation and delivery of goods, cured any jurisdictional defect in **removal** of shippers' state-court negligence action against transportation company and storage company, which arose from mold damage sustained by shippers' household goods while they were in post-move storage, such that remand was not required even if Carmack Amendment did not completely preempt all of shippers' state claims. York v. Day Transfer Co., D.R.I.2007, 525 F.Supp.2d 289. **Removal** Of Cases 15; **Removal** Of Cases 102; **Removal** Of Cases 118

---- Derivative jurisdiction, jurisdiction of removal court

Derivative jurisdiction rule did not apply to preclude federal district court from exercising **removal** jurisdiction over obligor's action against bank that had been taken over Federal Deposit Insurance Corporation, even if state court did not have jurisdiction at time it entered default judgment, where state court had jurisdiction at time FDIC filed **removal** petition. Beighley v. F.D.I.C., C.A.5 (Tex.) 1989, 868 F.2d 776, rehearing denied. **Removal** Of Cases 111

Since third-party claim against Department of Housing and Urban Development was not properly within jurisdiction of state court, **federal court** to which state action was **removed** lacked **removal** jurisdiction. Federal Nat. Mortg. Ass'n v. LeCrone, C.A.6 (Ohio) 1989, 868 F.2d 190, rehearing denied, certiorari denied 110 S.Ct. 335, 493 U.S. 938, 107 L.Ed.2d 324. **Removal** Of Cases 10

District court lacked jurisdiction over civil RICO action **removed** from state court, under doctrine of "derivative jurisdiction," in view of determination that **federal courts** have exclusive jurisdiction over civil RICO actions, where original action was

commenced in state court before effective date of legislation overruling doctrine of derivative jurisdiction and action was dismissed by district court for failure to state claim upon which relief could be granted at early stage in proceeding, when there had been little or no discovery, so there was no waiver of lack of jurisdiction. Chivas Products Ltd. v. Owen, C.A.6 (Mich.) 1988, 864 F.2d 1280. **Removal** Of Cases 111

Amendment of **removal** statute, permitting district court to hear and determine claim in civil action even if state court from which action was **removed** did not have jurisdiction over claim, was inapplicable to action involving taxes allegedly due from Indian tribe's bingo operator, where action was commenced in state court prior to enactment of amendment. Department of Revenue of State of Iowa v. Investment Finance Management Co., Inc., C.A.8 (Iowa) 1987, 831 F.2d 790, certiorari denied 108 S.Ct. 1575, 485 U.S. 1021, 99 L.Ed.2d 890. **Removal** Of Cases 2

At time action against federal officials for **removal** of residents of trailer court from federal land was improperly commenced in state court which lacked jurisdiction over action due to sovereign immunity of federal officials, **federal court** was without jurisdiction over suit **removed** to it from state court which lacked subject matter jurisdiction, even though **federal court** would have had jurisdiction had suit been brought there originally; amendment allowing **federal court** to hear case even if state court from which suit was **removed** did not have jurisdiction over claim was enacted subsequent to case, and thus did not apply. Beeman v. Olson, C.A.9 (Cal.) 1987, 828 F.2d 620. **Removal** Of Cases 2; **Removal** Of Cases 10

Under derivative jurisdiction doctrine, federal district court lacked **removal** jurisdiction over hospital's third-party complaint for indemnification and contribution against physician and physician's employer in medical malpractice action, even if state court had jurisdiction when third-party complaint was filed, where action was not **removed** under general **removal** statute but on basis of federal government's certification that physician and employer were deemed eligible for malpractice coverage under Federal Tort Claims Act (FTCA) and that physician was deemed to have been acting within scope of his employment as federal employee at time of incident of which patient complained. Jiron v. Christus St. Vincent Regional Medical Center, D.N.M.2012, 960 F.Supp.2d 1147. **Removal** of Cases 111

Derivative jurisdiction doctrine applied to **removal** of action into which defendant farming partnership brought United States via cross-complaint, under section governing actions against federal officers or agencies, and thus court's jurisdiction was limited to that granted to it by the state court, which lacked subject matter jurisdiction, despite argument that failure to expand doctrine could force partnership to litigate matters in two courts and could lead to inconsistent results; statutory language was clear, and thus there was no reason to rely on legislative history purportedly providing no justification to not expand the doctrine to such cases, the United States had sovereign immunity and could only be sued where it had waived that immunity, and, if court lacked subject matter jurisdiction, matters of potential inconvenience and prejudice did not negate that fact. Glass v. National R.R. Passenger Corp., C.D.Cal.2008, 570 F.Supp.2d 1180. **Removal** Of Cases 111

Pursuant to derivative jurisdiction doctrine, District Court did not, upon **removal**, acquire subject matter jurisdiction over **removed** third-party apportionment complaint against the United States, given that state court in which complaint was originally filed lacked jurisdiction over claims arising under the Federal Tort Claims Act. Gionfriddo v. Salaf, D.Conn.2004, 343 F.Supp.2d 109. **Removal** Of Cases 111

District court did not have **removal** jurisdiction of suit concerning applicability of certain insurance policies to claims for asbestos-related injuries, filed before June 19, 1986, where state court from which the action was **removed** did not have jurisdiction, under Pennsylvania law, because injured claimants were not joined in the action. General Refractories Co. v. American Mut. Liability Ins. Co., E.D.Pa.1987, 678 F.Supp. 104. **Removal** Of Cases 10

Amendment of 1986 to this section, which amendment provided that court to which civil action is **removed** is not precluded from hearing and determining claim even if state court from which action was **removed** lacked jurisdiction, applied to claim asserted against Environmental Protection Agency; claim against Agency did not commence until twelfth amended and supplemental

petition naming Agency as defendant, was filed on September 9, 1986, more than two months after effective date of amendment. Ewell v. Petro Processors of Louisiana, Inc., M.D.La.1987, 655 F.Supp. 933. **Removal** Of Cases 2

Dismissal of action, which was commenced in state court prior to effective date of statute which expressly repealed derivative jurisdiction doctrine and which was **removed** to **federal court**, is required where state court lacks subject-matter jurisdiction over matter. Village Imp. Ass'n of Doylestown, Pa. v. Dow Chemical Co., E.D.Pa.1987, 655 F.Supp. 311. **Federal Courts** 2086

---- Supplemental jurisdiction, jurisdiction of removal court

State employee's defamation claim against coworker, whose anonymous tip instigated investigation giving rise to federal constitutional claims, fell under district court's supplemental jurisdiction and was properly **removed** along with federal claims. Gossmeyer v. McDonald, C.A.7 (Ill.) 1997, 128 F.3d 481. **Federal Courts** 2546

District Court would not exercise supplemental jurisdiction over Massachusetts negligence claim in action against Massachusetts transportation authority by individual who used wheelchair, where individual's ADA claims had been dismissed, case was still in its early stages, and negligence claim presented state law issue of sovereign immunity. LeClair v. Massachusetts Bay Transportation Authority, D.Mass.2018, 300 F.Supp.3d 318. **Federal Courts** 2564

Enforcement ancillary jurisdiction in District Court for the Eastern District of New York was not appropriate over judgment obtained by executor of estate in District Court for the Western District of Missouri, in products liability action against drug manufacturer, as executor chose not to register judgment with the New York District Court; thus, enforcement action could not have been brought in the New York District Court originally and the New York District Court lacked subject matter jurisdiction over executor's **removed** state court action seeking postjudgment interest on the products liability judgment. Winter v. Novartis Pharmaceuticals Corp., E.D.N.Y.2014, 39 F.Supp.3d 348. **Federal Courts** 2554; **Removal** of Cases 11

Supplemental jurisdiction cannot supply the original jurisdiction needed to **remove** a state court complaint, even if the action which a defendant seeks to **remove** is related to another action over which the federal district court already has subject-matter jurisdiction, and even if **removal** would be efficient. Port Authority of New York and New Jersey v. Allianz Ins. Co., S.D.N.Y.2006, 443 F.Supp.2d 548. **Federal Courts** 2541

Following employee's decision to abandon her ADA claim against employer, which provided sole basis for **removal** of suit to **federal court**, district court would decline, in interests of judicial economy, convenience, fairness and comity, to exercise supplemental jurisdiction over employee's remaining claim that employer violated Connecticut Fair Employment Practices Act (CFEPA); although case had been pending before court for approximately a year, no jury had been selected in case, and court had not become familiar with factual background of suit to extent that would justify exercise of supplemental jurisdiction. Mills v. Re/Max Heritage, D.Conn.2004, 303 F.Supp.2d 160. **Federal Courts** 2564

Party may not rely on supplemental jurisdiction as an independent basis for **removal**. Riggs v. Plaid Pantries, Inc., D.Or.2001, 233 F.Supp.2d 1260. **Federal Courts** 2541

Any relatedness between trustee for bondholders' foreclosure and replevin action in state court against borrowers and three other federal cases did not establish federal subject matter jurisdiction over the state court action on **removal** to federal district court, thus warranting remand, as subject matter jurisdiction over a case did not turn upon the case's alleged factual relation to other federal actions. The Bank of New York Mellon v. ACR Energy Partners, LLC, D.N.J.2015, 543 B.R. 158. **Removal** of Cases 19(1); **Removal** of Cases 102

---- Sua sponte determination, jurisdiction of removal court

In deciding whether **removal** is appropriate, district judge may resolve disputed jurisdictional fact issues and may rely on affidavits as well as pleadings. Hyatt Corp. v. Stanton, S.D.N.Y.1996, 945 F.Supp. 675. **Removal** Of Cases 107(4)

District court may and should always determine sua sponte whether its subject-matter jurisdiction has been properly invoked by a **removal** petitioner. Martin v. Wilkes-Barre Pub. Co., M.D.Pa.1983, 567 F.Supp. 304. **Removal** Of Cases 100

District court considers sua sponte whether its **removal** jurisdiction has been properly invoked; for, without a finding that such jurisdiction exists, court is without power to proceed. Fort v. Ralston Purina Co., E.D.Tenn.1978, 452 F.Supp. 241. **Removal** Of Cases 100

In order to determine whether the requirements for **removal** have been met, district court must determine whether the case is one which would have been within its jurisdiction initially. Landmark Tower Associates v. First Nat. Bank of Chicago, S.D.Fla.1977, 439 F.Supp. 195. **Removal** Of Cases 102

Where party alleging jurisdiction has failed to satisfy the minimum jurisdictional requirement for federal jurisdiction, the court, sua sponte, has the right and duty to raise the jurisdictional defect. Van Horn v. Western Elec. Co., E.D.Mich.1977, 424 F.Supp. 920. **Federal Courts** 2074

Role of the **federal court** in considering propriety of **removal** is always to look to the essence or real nature of the claim asserted in the complaint to ascertain whether it involves a federal question, regardless of whether it is so characterized. Ashley v. Southwestern Bell Tel. Co., W.D.Tex.1976, 410 F.Supp. 1389. **Removal** Of Cases 25(1)

A district court is required to notice and determine federal jurisdiction of a **removed** case. Dunkin Donuts of America v. Family Enterprises, Inc., D.C.Md.1974, 381 F.Supp. 371. **Removal** Of Cases 100

District court was required to determine whether case had been properly **removed**, even though plaintiffs had not objected to **removal**. Fischer v. Holiday Inn of Rhinelander, Inc., W.D.Wis.1973, 375 F.Supp. 1351, 180 U.S.P.Q. 458. **Removal** Of Cases 106

A district court is required on its own motion to notice and determine federal jurisdiction of a **removed** cause and to be sure that federal jurisdiction exists. McRae v. Arabian Am. Oil Co., S.D.N.Y.1968, 293 F.Supp. 844. **Removal** Of Cases 100

While **removal** of case to **federal court** and supporting jurisdiction were not challenged by plaintiff, **federal court** had duty on its own to examine its authority to decide case. Eickhof Const. Co. v. Great Northern Ry. Co., D.C.Minn.1968, 291 F.Supp. 44. **Removal** Of Cases 100

Court is required to notice on its own motion defects in jurisdiction both in original actions and in **removed** causes. Sexton v. Allday, E.D.Ark.1963, 221 F.Supp. 169. Courts 39; **Removal** Of Cases 100

---- Domestic relations actions, jurisdiction of removal court

Action brought by wife against husband seeking modification of property settlement agreement incorporated into divorce decree would be remanded to Puerto Rican court, as action was within domestic relations exception to federal diversity jurisdiction. Rotolo v. Rotolo, D.Puerto Rico 1988, 682 F.Supp. 8. **Removal** Of Cases 102

Dissolution of marriage proceedings are not **removable** to **federal court**. Anderson v. State of Neb., D.C.Neb.1981, 530 F.Supp. 19, appeal dismissed 668 F.2d 349. **Removal** Of Cases 11

Removal to **federal court** of claim of wife, against whom dissolution action had been brought by husband, against husband's pension trust under community property law of California would constitute an intolerable interference with traditional state functions. In re Marriage of Pardee, C.D.Cal.1976, 408 F.Supp. 666. **Removal** Of Cases 19(1)

Action for separation commenced in Louisiana court could not be **removed** to federal district court on ground that Louisiana court followed policy of favoring mother over father in child custody cases simply because of sex, since case could not have been originally instituted in **federal court** as divorce actions were left entirely to the states and did not raise federal questions. Estilette v. Estilette, W.D.La.1975, 402 F.Supp. 1078. **Removal** Of Cases 11

Challenges to constitutionality of state divorce law formed no basis for **removal** of divorce action to **federal court**; the terms and provisions of this chapter itself must be pursued and observed in order to invoke whatever benefits may be supposed to flow from utilization of **federal courts** in a case which is **removable** under those provisions. Blank v. Blank, W.D.Pa.1971, 320 F.Supp. 1389. **Removal** Of Cases 18

Federal district court was without jurisdiction to entertain **removed** case wherein plaintiff sought divorce, alimony, and declaratory and injunctive relief relating to realty, and since other matters raised were not severable action would be remanded to state court. Druen v. Druen, D.C.Colo.1965, 247 F.Supp. 754. **Removal** Of Cases 11; **Removal** Of Cases 49.1(1)

---- In rem proceedings, jurisdiction of removal court

Trustee's Minnesota state court petition seeking determination of who controlled trust and instructions regarding how timberland in trust should be managed was in rem proceeding which could not be **removed** to **federal court**, insofar as state court had continuing jurisdiction over trust. Matter of Trust Created by Hill on Dec. 31, 1917 for Ben. of Schroll, D.Minn.1990, 728 F.Supp. 564. **Removal** Of Cases 4

Proceeding wherein trustee of charitable trust sought to have sale of stock approved by Pennsylvania court though trustee had previously agreed to commit trust to vote such stock in favor of a merger proposal was a "quasi in rem proceeding" and thus could not be **removed** to **federal court**. Glenmede Trust Co. v. Dow Chemical Co., E.D.Pa.1974, 384 F.Supp. 423. **Removal** Of Cases 4

An in rem or quasi in rem proceeding may be **removed** to federal district court providing a federal jurisdictional base is present. Ladson v. Kibble, S.D.N.Y.1969, 307 F.Supp. 11. **Removal** Of Cases 4

In rem actions are **removable** in appropriate circumstances under this section. State of N.J. v. Moriarity, D.C.N.J.1967, 268 F.Supp. 546. **Removal** Of Cases 4

A **federal court** may not by **removal** interfere with state in rem proceedings. In re Lummis' Estate, D.C.N.J.1954, 118 F.Supp. 436.

---- Protection of state court jurisdiction, jurisdiction of removal court

Since **removal** of case ousts state court of jurisdiction, due regard for rightful independence of state governments should actuate **federal courts** and requires that **federal courts** scrupulously confine their own jurisdiction to precise limits which **removal** statute has defined. Irving Trust Co. v. Century Export & Import, S.A., S.D.N.Y.1979, 464 F.Supp. 1232. **Removal** Of Cases 3

Federal courts should not sanction devices intended to prevent **removal** to **federal court** when one has that right, and should be equally vigilant to protect right to proceed in **federal court** as to permit state courts, in proper cases, to retain their own jurisdiction. Gentle v. Lamb-Weston, Inc., D.C.Me.1969, 302 F.Supp. 161. **Removal** Of Cases 1

In determining whether case is **removable**, court must exercise same care to protect jurisdiction of state court as is exercised in protecting jurisdiction of **federal court**. Hill v. Branscum, W.D.Ark.1962, 208 F.Supp. 360. See, also, Garroutte v. General Motors Corp., D.C.Ark.1959, 179 F.Supp. 315. **Removal** Of Cases 89(1)

A **federal court**, while careful to preserve its own jurisdiction in a case that is **removable**, should exercise same care to protect jurisdiction of a state court in a case that is not **removable**. Putterman v. Daveler, D.C.Del.1958, 169 F.Supp. 125. **Removal** Of Cases 89(2)

Same care must be exercised in protecting jurisdiction of state court with respect to case not subject to **removal** as is exercised in protecting jurisdiction of **federal court** with respect to one that is **removable**. Jones v. Capers, W.D.Ark.1958, 166 F.Supp. 617. **Removal** Of Cases 100

---- Waiver, jurisdiction of removal court

Even if Court of Appeals had discretion to depart from normal rule of retroactivity based on risk of grave disruption or inequity, no such risk existed in instant case that would require prospective-only application of Court of Appeals' holding that the forum-defendant rule, making **removal** of non-federal-question case improper when a properly-joined defendant is citizen of forum state, is a nonjurisdictional defect that can be waived, in employee's retaliatory discharge action against employer, which was filed in state court and then **removed** by employer; employee did not contest **federal court** jurisdiction and stated that he just wanted "to have [his] case heard," and Court of Appeals would proceed to consider merits of case. Holbein v. TAW Enterprises, Inc., C.A.8 (Neb.) 2020, 983 F.3d 1049. Courts 100(1)

Defendant did not waive any jurisdictional objections by **removing** action from state to **federal court**, or by commencing discovery, where defendant promptly and repeatedly raised defense of defective service. Gerena v. Korb, C.A.2 (Conn.) 2010, 617 F.3d 197, on remand 2010 WL 5067700. **Removal** Of Cases 94; **Removal** Of Cases 111; **Removal** Of Cases 115

City's failure to move before district court for remand of its **removed** state-court action against telecommunications provider, in which city sought declaration that provider was required under state and local law to negotiate franchise agreement with city, did not establish that city intended to raise federal claim, such that city was precluded from arguing on appeal that federal question jurisdiction did not lie, inasmuch as city brought action in state court, explicitly requested statement of its rights under state and city law, and nature of federal and state issues differed significantly; such result was unaffected by city's threat not to allow provider to work under city's streets until negotiations commenced, which did not clearly violate Telecommunications Act. City of Rome, N.Y. v. Verizon Communications, Inc., C.A.2 (N.Y.) 2004, 362 F.3d 168. **Removal** Of Cases 107(9)

Failure to challenge **removal** cannot confer subject-matter jurisdiction which does not otherwise exist in the **federal court**. Medlin v. Boeing Vertol Co., C.A.3 (Pa.) 1980, 620 F.2d 957. **Removal** Of Cases 17

Defendant could not **remove** case from New York State Superior Court to federal District Court in television personality's action against defendant seeking order directing defendant to comply with terms of a prior settlement agreement, which included non-disclosure agreement and agreement that "there had been no wrongdoing," pending resolution of arbitration, as provided in that agreement, where defendant's counsel had "baselessly" attempted to **remove** the case on more than one occasion, defendant had effectively waived her right to **removal** by agreeing to either any New York State Court or the Southern District of New York, and allowing defendant's successive **removal** would work against interests of judicial economy and "serve to condone

the casual disregard of the rules." O'Reilly v. Mackris, E.D.N.Y.2021, 2021 WL 3686314. **Removal** of Cases 17; **Removal** of Cases 110

District court would not revisit its provisional finding of **removal** jurisdiction, where plaintiffs had moved action beyond issue of **removal** jurisdiction by affirmatively invoking court's subject matter jurisdiction over their federal and state law claims. New Mexico v. General Elec. Co., D.N.M.2003, 335 F.Supp.2d 1157. **Removal** Of Cases 111

Parties cannot by stipulation or admission confer jurisdiction upon court, and thus plaintiff's failure to timely respond to request of third-party defendant for admissions, including admission that **removal** to **federal** **court** was proper, had no place in court's analysis of whether **removal** jurisdiction was proper. Morris v. Marshall County Bd. of Educ., N.D.W.Va.1983, 560 F.Supp. 43. **Removal** Of Cases 107(4)

Removal by the government from state court to federal district court does not constitute waiver of government's objections to jurisdictional defects in the **removal** court, nor is **removal** tantamount to consent by the government to be sued in the district court. Leddy v. U.S. Postal Service, E.D.Pa.1981, 525 F.Supp. 1053. **Removal** Of Cases 106; United States 427

Power of **federal** **court** to proceed with **removed** case where irregularity in **removal** is waived does not require **federal** **court** to assume jurisdiction but only estops plaintiff from challenging **removal** jurisdiction after certain point in time. Marival, Inc. v. Planes, Inc., N.D.Ga.1969, 302 F.Supp. 201. **Removal** Of Cases 94

No kind of acquiescence or consent to improper **removal** would or could confer jurisdiction on **federal** **court** where action could not have been initiated in **federal** **court**. Diaz v. Montaner Y Lizama, D.C.Puerto Rico 1965, 248 F.Supp. 153. **Removal** Of Cases 11

Diversity of citizenship of parties or some other jurisdictional fact is absolutely essential to **removal** of civil action from state court to federal district court and cannot be waived and want of it will be error at any stage of cause, even though assigned by party at whose instance it was committed. Yarbrough v. Blake, W.D.Ark.1962, 212 F.Supp. 133. **Removal** Of Cases 111

Abstention

Removal of village's nuisance action against oil company, which was involved in CERCLA cleanup within village, did not create a pending state proceeding with which the **removed** action, in **federal** **court**, conflicted, for purposes of *Younger* abstention. Village of DePue, Ill. v. Exxon Mobil Corp., C.A.7 (Ill.) 2008, 537 F.3d 775. **Federal** **Courts** 2634; **Removal** Of Cases 95

Abstention in favor of state court adjudication is sound judicial administration where it can increase the assurance that all those affected by the statute in question, including the parties to the action, will be given the benefit of an authoritative and uniform rule of law applied alike to all businesses and grievants. Naylor v. Case and McGrath, Inc., C.A.2 (Conn.) 1978, 585 F.2d 557. **Federal** **Courts** 2574

Where the sole reason a plaintiff files a second suit in **federal** **court** is to effectively **remove** her earlier-filed case from state court, it may result in findings that the nature of her federal suit is vexatious or contrived and that it undermines the principles governing **removal** jurisdiction, as factors weighing in favor of *Colorado River* abstention by the **federal** **court**. Figueroa v. Cestero, D.Puerto Rico 2018, 321 F.Supp.3d 259. **Federal** **Courts** 2579

Demand for damages made by liquidator of insolvent corporation in the breach of contract action it originally brought in Kentucky state court precluded district court from abstaining from exercising jurisdiction under the *Colorado River* doctrine, after the case was **removed** on the basis of diversity jurisdiction. Maynard v. CGI Technologies and Solutions, Inc., E.D.Ky.2017, 227 F.Supp.3d 773. **Federal** **Courts** 2696

Under doctrine of *Colorado River* abstention, balance of factors strongly favored abstention in diversity action by parents alleging medical malpractice against physicians and health care system for alleged violation of standards of prenatal care; although federal forum was equally convenient to state forum, parents, in effect, **removed** original suit to **federal court** by filing later, duplicative federal suit against same defendants, there was risk of piecemeal litigation that could be avoided by surrendering jurisdiction, as suit implicated unresolved and controlling issues of state law, and parents' conduct in essentially seeking to exploit federal system as means of bypassing slower state proceedings and achieving more expedient, final state court decision on issues of unresolved state law bordered on vexatious and contrived. Pasquantonio v. Poley, D.Mass.2011, 834 F.Supp.2d 33. **Federal Courts** 2627(2)

Removal statute did not weigh in favor of *Colorado River* abstention in Puerto Rico Ports Authority (PRPA) employee's disability discrimination and retaliation case; PRPA did not specifically allege that employee did not respect principles underlying **removal** jurisdiction nor did employee refile state claim from state court in **federal court**, and federal lawsuit was not duplicate of state suit. Valle-Arce v. Puerto Rico Ports Authority, D.Puerto Rico 2008, 585 F.Supp.2d 246. **Federal Courts** 2618

Even if former husband had complied with the requirements of **removal** statute and diversity jurisdiction was present, abstention would still be appropriate under domestic relations exception, where former wife's motion complained of former husband's alleged decrease in alimony paid pursuant to divorce decree without consent of former wife or court. Mojica v. Nogueras-Cartagena, D.Puerto Rico 2008, 573 F.Supp.2d 520. **Federal Courts** 2642; **Removal** Of Cases 111

Doctrine of abstention has no application in context of **removed** action; abstention can exist only where there is parallel proceeding in state court. McDowell v. Perkinelmer Las, Inc., M.D.La.2005, 369 F.Supp.2d 839. **Federal Courts** 2571; **Federal Courts** 2574

Requirement for **federal court** abstention, under *Younger* abstention doctrine, that there be ongoing state proceeding implicating important state interests, was not satisfied in suit seeking to compel Bulgarian tobacco company to comply with requirements of nonsignatories to settlement agreement involving tobacco liability litigation; when present case was **removed** from state to **federal court**, nothing remained of state action with which federal action could impermissibly interfere. Com. of Va. ex rel. Kilgore v. Bulgartabac Holding Group, E.D.Va.2005, 360 F.Supp.2d 791. **Federal Courts** 2600

Absence of concurrent state-court litigation precluded *Colorado River* abstention in **removed** state-court action in which county and county water authority asserted products liability claims against energy companies that added methyl tertiary butyl ether (MTBE) to gasoline. In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, S.D.N.Y.2004, 341 F.Supp.2d 351. **Federal Courts** 2600

Even if it had jurisdiction, **federal court** would abstain in summary possession proceeding brought in state court by landlord and **removed federal court** by tenant as the landlord and tenant dispute did not in any way implicate federal rights, and state had developed a system of administering its law governing possession of real estate which was fair and efficient. Glen 6 Associates, Inc. v. Dedaj, S.D.N.Y.1991, 770 F.Supp. 225. **Federal Courts** 2602

Fact that claim has been properly **removed** to **federal court** does not mean that court must immediately proceed to resolution on merits; under doctrine of abstention, court may refuse or delay its decision on legal issue, thereby leaving plaintiff to seek remedy in state court. Shepard v. Egan, D.Mass.1990, 767 F.Supp. 1158. **Removal** Of Cases 111

Primary justification for abstention of **federal courts** is unwarranted federal interference in interpretation and application of local statutory law. Oquendo v. Dorado Beach Hotel Corp., D.C.Puerto Rico 1974, 382 F.Supp. 516. **Federal Courts** 2574

If matter is **removed** from state court to district court pursuant to general **removal** statute, district court, if it otherwise has subject matter jurisdiction, is under duty to hear the matter, absent independent compelling state law interests that might favor abstention. In re Biglari Import & Export, Inc., Bkrtcy.W.D.Tex.1992, 142 B.R. 777. **Removal** Of Cases 100

Mandamus

Writ of mandamus would be warranted to address District Court's exercise of **removal** jurisdiction over voters' action to establish validity of ballots cast in Puerto Rico's gubernatorial election; **removal** order concerned the boundaries of federal judicial power, the risk of irreparable harm from continued pendency of **removal** jurisdiction was acute, as there were less than three weeks remaining before the gubernatorial inauguration, and remand order was plainly erroneous because voters' action did not present claim of right arising under federal law. Rossello-Gonzalez v. Calderon-Serra, C.A.1 (Puerto Rico) 2004, 398 F.3d 1. Mandamus 141

Venue--Generally

Removal does not waive challenges based on venue defects in underlying state court action, or fix venue in district courts of state of original action as matter of law, and, thus, because venue is not fixed, forum non conveniens dismissals, based on availability of "convenient" foreign venue, remain possible. PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc., C.A.2 (N.Y.) 1998, 138 F.3d 65. **Removal** Of Cases 108; **Removal** Of Cases 112

Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district court of the United States has original jurisdiction may be seasonably **removed** to **federal court** for the district and division embracing the place where such action is pending. Fresquez v. Farnsworth & Chambers Company, C.A.10 (N.M.) 1956, 238 F.2d 709. **Removal** Of Cases 11

If civil action filed in state court satisfies requirements for original federal jurisdiction, defendant may **remove** action to federal district court embracing place where such action is pending. May v. Board of County Com'rs for Cibola County, D.N.M.2013, 945 F.Supp.2d 1277. **Removal** of Cases 11; **Removal** of Cases 14; **Removal** of Cases 44

When a case has been **removed**, venue is governed by the **removal** statute. High Plains Const., Inc. v. Gay, S.D.Iowa 2011, 831 F.Supp.2d 1089. **Removal** of Cases 14

Once a case is properly **removed** to **federal court**, defendant cannot move to dismiss on general venue grounds. Keston v. FirstCollect, Inc., S.D.Fla.2007, 523 F.Supp.2d 1348. **Removal** Of Cases 14

Defendants' voluntary **removal** of case to **federal court** conferred venue over defendants. Kotan v. Pizza Outlet, Inc., D.D.C.2005, 400 F.Supp.2d 44. **Removal** Of Cases 14

Removal statute contemplates that **federal court** to which action is **removed** may not be one which would have been of proper venue if action had been originally filed in it. Addison v. North Carolina Dept. of Crime and Public Safety, M.D.N.C.1994, 851 F.Supp. 214. **Removal** Of Cases 14

Defendant could not **remove** state court action to **federal court** sitting in district and division other than that where state court action was pending. Hoover v. Gershman Inv. Corp., D.Mass.1991, 774 F.Supp. 60. **Removal** Of Cases 14

Venue of **removed** action was governed by this section permitting **removal** to district court for district embracing place where action is pending and not by § 1391 of this title requiring civil action to be brought in **federal courts** only in judicial district

where all plaintiffs or all defendants reside. Willner v. Thompson, E.D.N.Y.1968, 285 F.Supp. 394. **Removal** Of Cases 12; **Removal** Of Cases 14

Identification of particular United States district court to which **removable** case pending in state court shall be **removed** is not affected by § 1391 of this title relating generally to venue in federal district courts but is controlled by this section providing for **removal** to district court of United States for district and division embracing place where such action is pending. Tamminga v. Suter, N.D.Iowa 1962, 213 F.Supp. 488. **Removal** Of Cases 12

Venue of action **removed** from state court was governed by provisions of this section that it be brought in district wherein lay state court in which action was originally brought, and § 1391 of this title had no application. Fawick Corp. v. Alfa Export Corp., S.D.N.Y.1955, 135 F.Supp. 108. **Removal** Of Cases 14

Venue in **removed** actions is governed by **removal** statute, rather than the general venue statute. Quick v. Coale, Cooley, Lietz, McInerny & Broadus, P.C., M.D.N.C.2002, 212 F.R.D. 299. **Removal** Of Cases 14

---- Waiver, venue

Removal of case from state court to the wrong federal district is a procedural defect which is waived by failure to timely object. Cook v. Shell Chemical Co. (Shell Oil Co.), M.D.La.1990, 730 F.Supp. 1381. **Removal** Of Cases 94

---- Miscellaneous actions, venue

Removal of civil rights action to district court in district that did not embrace place where state court action was pending, as required by statute, was procedural defect that did not deprive district court of subject matter jurisdiction in **removed** case; geographic component of **removal** statute was in nature of venue provision. Peterson v. BMI Refractories, C.A.11 (Ala.) 1997, 124 F.3d 1386, on remand 1997 WL 244716. **Removal** Of Cases 14; **Removal** Of Cases 94

Venue was proper in District Court for the Middle District of Florida, following **removal** in commercial general liability (CGL) insurer's action against subsequent insurer seeking declaratory judgment that insurer did not have obligation to reimburse subsequent insurer for full settlement of breach of contract action against insured, where District court was court for district and division where action was pending in state court. National Trust Insurance Company v. Pennsylvania National Mutual Casualty Insurance Company, M.D.Fla.2016, 223 F.Supp.3d 1236. **Removal** Of Cases 14

Removal of commercial lender's action against equipment lessee for breach of equipment lease agreement from Pennsylvania state court to New York federal district court was improper, since it was not a district court which embraced the Pennsylvania state court, as required by **removal** statute, and thus remand to state court was warranted. Marlin Business Bank v. Halland Companies, LLC, E.D.N.Y.2014, 18 F.Supp.3d 239. **Removal** of Cases 14; **Removal** of Cases 101.1

Under **removal** statute, venue was proper in district in which life insurer initially filed action in state court. Reassure America Life Ins. Co. v. Midwest Resources, Ltd., E.D.Pa.2010, 721 F.Supp.2d 346. **Removal** Of Cases 14

Venue in Middle District of Pennsylvania was proper in action that was commenced in Pennsylvania state court and **removed** to Middle District, even if other districts might be available for adjudication of claims. Heft v. AAI Corp., M.D.Pa.2005, 355 F.Supp.2d 757. **Removal** Of Cases 14

Proper venue for action **removed** from state court was district court for district and division embracing place from which action was **removed**, notwithstanding that defendants were incorporated in another state and substantial part of events giving rise to suit allegedly occurred there. Ferrell v. Grange Ins., S.D.W.Va.2005, 354 F.Supp.2d 675. **Removal** Of Cases 14

Venue in District Court for District of Maryland was proper for case **removed** from Maryland state court, and therefore case would not be transferred. Lynch v. Vanderhoef Builders, D.Md.2002, 228 F.Supp.2d 644. **Federal Courts** 2908

Action for declaratory judgment brought in Rockland County Supreme Court to establish that plaintiff had not entered into a collective bargaining agreement with defendant union which claimed to represent employees of refuse carting concerns in the area could be **removed** only to United States District Court for the Southern District of New York and could not be **removed** to Eastern District of New York under § 185(c) of Title 29 providing that for purposes of actions and proceedings by or against labor organizations district courts shall be deemed to have jurisdiction of a labor organization in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members. Franchino v. Valenti, E.D.N.Y.1972, 347 F.Supp. 1020. **Removal** Of Cases 14

Where action was brought in Nebraska state court and **removed** to federal District Court for District of Nebraska, where it was decided that service of process and jurisdictional prerequisites had been met, venue of action was properly laid in District of Nebraska. Kellner v. Saye, D.C.Neb.1969, 306 F.Supp. 1041, transferred to 331 F.Supp. 846, affirmed 474 F.2d 1400. **Removal** Of Cases 111

Personal injury action instituted in state court of county in which automobile accident occurred and **removed** by defendant to **federal court** would be transferred to division of **federal court** which had jurisdiction over that county. Straub v. Kean, E.D.S.C.1962, 207 F.Supp. 420. **Federal Courts** 3971

United States District Court for the Eastern District of Wisconsin had jurisdiction to accept **removal** of state court action from Circuit Court, Milwaukee County, brought by Illinois residents against Indiana resident arising out of an accident which had occurred in Wisconsin. Orn v. Universal Auto. Ass'n of Ind., E.D.Wis.1961, 198 F.Supp. 377. **Removal** Of Cases 14

Where sale contract of truck with written warranty was entered into at place of business of dealer in Jefferson County, Kentucky, and obligation under warranty was limited to repair of defective parts “at the dealer's location”, contract was made and was to be performed in Jefferson County, Kentucky, and under Kentucky statute the action for breach of contract should have been brought in such county and not in Laurel County, and on **removal** of case from the Laurel Circuit Court the **federal court** was also without jurisdiction. Grimes v. Hull-Dobbs, Inc., E.D.Ky.1957, 154 F.Supp. 151. **Removal** Of Cases 10

Middle District of North Carolina was proper venue for **removed** case filed in state court in Richmond County, North Carolina, pursuant to statute providing the proper venue of a **removed** action is “the district court of the United States for the district and division embracing the place where such action is pending.” Quick v. Coale, Cooley, Lietz, McInerny & Broadus, P.C., M.D.N.C.2002, 212 F.R.D. 299. **Removal** Of Cases 14

Pleadings in state court--Generally

In assessing whether a plaintiff's claims were properly **removable**, Court of Appeals looks to plaintiff's pleadings. Boggs v. Lewis, C.A.9 (Mont.) 1988, 863 F.2d 662. **Removal** Of Cases 107(4)

As a general rule, **removability** is determined by plaintiff's pleadings. Union Planters Nat. Bank of Memphis v. CBS, Inc., C.A.6 (Tenn.) 1977, 557 F.2d 84. **Removal** Of Cases 61(2)

Plaintiff may preclude **removal** of state court action to **federal court** by electing not to plead optional federal cause of action. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. **Removal** Of Cases 25(1)

To determine propriety of petition for **removal** from state court, court must restrict itself to plaintiff's pleading which controls. Griffin v. Ford Consumer Finance Co., W.D.N.C.1993, 812 F.Supp. 614. **Removal** Of Cases 61(2)

Removability is dependent upon allegations of pleadings actually filed by plaintiff and not by what he could have alleged. Chevron U.S.A., Inc. v. Aguillard, M.D.La.1980, 496 F.Supp. 1038. **Removal** Of Cases 61(2)

In determining whether action is **removable**, court looks only to allegations on face of complaint. Typh, Inc. v. Typhoon Fence of Pennsylvania, Inc., E.D.Pa.1978, 461 F.Supp. 994. **Removal** Of Cases 25(1)

For purpose of this section relating to **removal**, plaintiff's complaint controls. City of New York v. New York Jets Football Club, Inc., S.D.N.Y.1977, 429 F.Supp. 987. **Removal** Of Cases 61(2)

Whether a state action arises under federal law, and is therefore **removable** to **federal court**, is determined with reference solely to plaintiff's complaint. State of N.Y. v. Local 1115 Joint Bd., Nursing Home and Hosp. Employees Div., E.D.N.Y.1976, 412 F.Supp. 720. **Removal** Of Cases 25(1)

Determination whether case is **removable** to federal district court under this section is controlled by plaintiff's pleading. Herrmann v. Braniff Airways, Inc., S.D.N.Y.1969, 308 F.Supp. 1094. **Removal** Of Cases 61(2)

The **removability** of an action from a state court is to be determined from the statement of the case as disclosed by the complaint or declaration. Cipriano v. Monarch Life Ins. Co., D.C.R.I.1956, 138 F.Supp. 50. **Removal** Of Cases 86(1)

Generally, the right of **removal** will be decided by the pleadings. Cudney v. Midcontinent Airlines, E.D.Mo.1951, 98 F.Supp. 403. **Removal** Of Cases 25(1)

---- Necessary allegations, pleadings in state court

Removal must be based on complaint or its necessary implications, not on subsequently established facts, at least unless federal jurisdiction is exclusive. Costantini v. Guardian Life Ins. Co. of America, S.D.N.Y.1994, 859 F.Supp. 89. **Removal** Of Cases 25(1)

Federal controversy that forms basis of original jurisdiction must be disclosed by face of plaintiff's complaint unaided by answer or by petition for **removal**. Zimmerman v. Conrail, S.D.N.Y.1982, 550 F.Supp. 84. **Federal Courts** 2349; **Federal Courts** 2352; **Removal** Of Cases 25(1)

In order to support **removal**, it must appear from complaint that case could have originally been brought in **federal court**. Dodd v. Rue, S.D.Ohio 1979, 478 F.Supp. 975, 15 O.O.3d 196. **Removal** Of Cases 11

Grounds for **removal** must inhere in plaintiff's claim, not in matter of defense or counterclaim. Irving Trust Co. v. Century Export & Import, S.A., S.D.N.Y.1979, 464 F.Supp. 1232. **Removal** Of Cases 61(2)

In order to obtain **removal**, the controversy generally must be disclosed on the face of the complaint, unaided by defendant's answer or petition for **removal**. Rettig v. Arlington Heights Federal Sav. and Loan Ass'n, N.D.Ill.1975, 405 F.Supp. 819. **Removal** Of Cases 25(1)

---- Substance over form controlling, pleadings in state court

Whether case has been properly **removed** is largely determined by reference to plaintiff's state court complaint; while range of federal judicial authority is by no means bound by phrasing of that complaint, **federal court** will disregard plaintiff's

characterization of action and appropriate parties thereto only where necessary to avoid unjust manipulation or avoidance of its jurisdiction. Lyon v. Centimark Corp., E.D.N.C.1992, 805 F.Supp. 333. **Removal** Of Cases 25(1)

Propriety of **removal** is not dependent on claim stating a cause of action. National Audubon Soc. v. Department of Water & Power of City of Los Angeles, E.D.Cal.1980, 496 F.Supp. 499. **Removal** Of Cases 1

Mere utilization of separate counts or causes of action to plead different legal theories does not determine question of propriety of **removal**, but, rather, complaint as a whole must be considered. City of New York v. New York Jets Football Club, Inc., S.D.N.Y.1977, 429 F.Supp. 987. **Removal** Of Cases 61(1)

Court would have to look to substance of causes of action to determine **removability** issues. Knight v. First Pyramid Life Ins. Co. of America, W.D.Okla.1966, 256 F.Supp. 32. **Removal** Of Cases 107(4)

---- State court pleadings controlling, pleadings in state court

Absent concealment of federal question or fraudulent joinder of parties, plaintiff's state court pleading controls **removability**. Paxton v. Weaver, C.A.5 (Miss.) 1977, 553 F.2d 936. **Removal** Of Cases 25(1); **Removal** Of Cases 47

Generally, plaintiff's state court pleadings control **removability**. Martin v. Wilkes-Barre Pub. Co., M.D.Pa.1983, 567 F.Supp. 304. **Removal** Of Cases 25(1)

Generally, plaintiff's state court pleadings control question of **removability**. Schultz v. Coral Gables Federal Sav. & Loan Ass'n, S.D.Fla.1981, 505 F.Supp. 1003. **Removal** Of Cases 25(1)

In absence of fraud or collusion, allegations of complaint are controlling in determining whether case brought in state court may be **removed** to federal forum. Bowerman v. Tomhave, E.D.Pa.1975, 414 F.Supp. 7. **Removal** Of Cases 107(4)

Grounds for **removal** must be found in declaration or complaint or in initiatory proceedings in state court. In re Stuart, W.D.Mich.1956, 143 F.Supp. 772. **Removal** Of Cases 15

---- Time of determination, pleadings in state court

In determining whether cause of action arises under federal law for purposes of **removal**, court must look to complaint as it existed at time petition for **removal** was filed to decide whether plaintiff's position has any legal substance. Cromwell v. Equicor-Equitable HCA Corp., C.A.6 (Ohio) 1991, 944 F.2d 1272, certiorari dismissed 113 S.Ct. 2, 505 U.S. 1233, 120 L.Ed.2d 931. **Removal** Of Cases 25(1)

Generally, nature of a plaintiff's claim must be evaluated, and propriety of remand decided, on basis of record as it stands at time petition for **removal** is filed. Westmoreland Hospital Ass'n v. Blue Cross of Western Pennsylvania, C.A.3 (Pa.) 1979, 605 F.2d 119, certiorari denied 100 S.Ct. 1025, 444 U.S. 1077, 62 L.Ed.2d 759. **Removal** Of Cases 107(4)

Allegations of complaint as set forth at time petition for **removal** was filed are controlling. Crosby v. Paul Hardeman, Inc., C.A.8 (Ark.) 1969, 414 F.2d 1. See, also, Brunwasser v. Strassburger, W.D.Pa.1980, 490 F.Supp. 959. **Removal** Of Cases 107(4)

The **removability** of a legal matter is determined from the plaintiff's pleadings at the time of **removal**. Costa v. Verizon New Jersey, Inc., D.N.J.2013, 936 F.Supp.2d 455. **Removal** of Cases 15

Removal jurisdiction depends on the plaintiff's state court pleadings at the time of **removal**. Goffney v. Bank of America, N.A., S.D.Tex.2012, 897 F.Supp.2d 520. **Removal** of Cases 15

Although jurisdiction of a **removed** case is determined at the time of **removal**, a court retains discretion as to whether to continue to exercise jurisdiction when no federal claims remain. Glover v. Borelli's Pizza, Inc., S.D.Cal.2012, 886 F.Supp.2d 1200. **Federal Courts** 2564; **Removal** Of Cases 15; **Removal** Of Cases 102

In order to determine whether federal jurisdiction is present for **removal** purposes, claims set forth in state court petition are considered as of date of **removal**. Ray Mart, Inc. v. Stock Building Supply of Texas, LP, E.D.Tex.2006, 435 F.Supp.2d 578. **Removal** Of Cases 15

Allegations of complaint existing at time of **removal** control whether plaintiffs' allegations are sufficient to establish federal question subject matter jurisdiction. Clark v. Ameritas Investment Corp., D.Neb.2005, 408 F.Supp.2d 819, report and recommendation adopted 2006 WL 1401727. **Removal** Of Cases 15

Class Action Fairness Act did not apply to class action that was filed in state court before Act's effective date, but **removed** to **federal court** after that date; action was "commenced" for purposes of Act when it was filed in state court, not when it was **removed**. Pritchett v. Office Depot, Inc., D.Colo.2005, 360 F.Supp.2d 1176, affirmed 404 F.3d 1232, amended and superseded 420 F.3d 1090. **Removal** Of Cases 115

Mortgagee's act of becoming an operating subsidiary of a federal savings bank after mortgagor's lawsuit was filed in state court was not proper basis for **removal**; such a unilateral act could not be the predicate for the **removal** of a case that was not **removable** when originally filed. Dowd v. Alliance Mortg. Co., E.D.N.Y.2004, 339 F.Supp.2d 452. **Removal** Of Cases 23

Removability should be determined according to plaintiff's pleading at time of petition for **removal**. Garbutt v. Southern Clays, Inc., M.D.Ga.1994, 844 F.Supp. 1551. **Removal** Of Cases 15

Removal jurisdiction based on federal question is determined from complaint as it existed at time of **removal**, not as subsequently amended. Burnette v. Godshall, N.D.Cal.1993, 828 F.Supp. 1439, affirmed 72 F.3d 766. **Removal** Of Cases 15

Removability is to be determined by looking at complaint as it existed when petition for **removal** was filed. Campos v. Housland, Inc., S.D.Tex.1993, 824 F.Supp. 100. **Removal** Of Cases 25(1)

Federal court must determine whether **removal** was proper according to plaintiff's pleading at time of petition for **removal**. McCaslin v. Blue Cross and Blue Shield of Alabama, N.D.Ala.1991, 779 F.Supp. 1312. **Removal** Of Cases 15

Removability is determined on basis of complaint and notice of **removal**, as they read at time complaint and notice are filed. Blair v. Migliorini, N.D.Ohio 1990, 744 F.Supp. 165. **Removal** Of Cases 15

For purposes of **removal** jurisdiction, district court looks only to complaint as it reads at time of **removal**. Lamson v. Firestone Tire and Rubber Co., N.D.Ohio 1989, 724 F.Supp. 511. **Removal** Of Cases 25(1)

Right to **removal** is generally determined by pleadings as they stand when **removal** petition is filed. Murjani v. All State Ins. Co., M.D.La.1988, 679 F.Supp. 601. **Removal** Of Cases 15

On petition for **removal**, court must consider pleadings as they exist at time of **removal**, i.e., must examine record as it stands at time petition for **removal** is filed. Diaz v. Swiss Chalet, D.C.Puerto Rico 1981, 525 F.Supp. 247. **Removal** Of Cases 25(1)

In case sought to be **removed** from state to **federal court**, right to **removal** is decided by pleadings, viewed as of time when petition for **removal** is filed. Bowman v. Iowa State Travelers Mut. Assur. Co., E.D.Okla.1978, 449 F.Supp. 60. **Removal** Of Cases 75

Federal court's jurisdiction of action sought to be **removed** from state court was to be decided by pleadings viewed as of time when petitions for **removal** were filed. Housing Authority of Dauphin County v. Danner, M.D.Pa.1978, 448 F.Supp. 152. **Removal** Of Cases 11; **Removal** Of Cases 25(1)

Removability is determined as of date when petition for **removal** is filed and depends upon case disclosed by pleadings at that time. Nash v. Hall, W.D.Okla.1977, 436 F.Supp. 633. **Removal** Of Cases 25(1)

Removability of cases is determined by state of plaintiff's pleadings as of time when **removal** petition is filed; court looks to complaint as amended at time of filing of **removal** petition, and not to original complaint. Milton R. Barrie Co., Inc. v. Levine, S.D.N.Y.1975, 390 F.Supp. 475. **Removal** Of Cases 79(1)

Right of **removal** must have existed as of the time **removal** was attempted, and the pleadings must be viewed accordingly. Wamp v. Chattanooga Housing Authority, E.D.Tenn.1974, 384 F.Supp. 251, affirmed 527 F.2d 595, certiorari denied 96 S.Ct. 2203, 425 U.S. 992, 48 L.Ed.2d 816. **Removal** Of Cases 81

Removability is to be determined from record as it existed at time **removal** was effectuated. Cooper v. Georgia Cas. & Sur. Co., W.D.S.C.1965, 241 F.Supp. 964. **Removal** Of Cases 15

Right of **removal** of case must appear from record at time of filing of petition for **removal**. Glucksman v. Columbia Broadcasting System, Inc., S.D.Cal.1963, 219 F.Supp. 767. See, also, Nu-Way Systems of Indianapolis, Inc. v. Belmont Marketing, Inc., C.A. 7 (Ind.) 1980, 635 F.2d 617; Scurlock v. American President Lines, Limited, D.C.Cal.1958, 162 F.Supp. 78; Rodriguez v. Union Oil Co. of Cal., D.C.Cal.1954, 121 F.Supp. 824. **Removal** Of Cases 15

Right of **removal** is to be resolved according to plaintiff's pleadings at time of petition for **removal**. Patriot-News Co. v. Harrisburg Printing Pressmen, M.D.Pa.1961, 191 F.Supp. 568. **Removal** Of Cases 89(2)

No civil action is subject to **removal** unless it appears from record upon filing of petition for **removal** not only that the action is one in which **federal court** could have exercised original jurisdiction at time of **removal**, but also that the action is one in which state court has jurisdiction over subject matter at time of **removal**. Rodriguez v. Union Oil Co. of Cal., S.D.Cal.1954, 121 F.Supp. 824. **Removal** Of Cases 10

The right to **remove** a cause of action from a state court to a **federal court** must exist at the time of petition for **removal**. Ronson Art Metal Works v. Comet Import Corp., S.D.N.Y.1952, 103 F.Supp. 531. **Removal** Of Cases 43

---- Amendments, pleadings in state court

If amended complaint filed by State in **federal court** after suit which it had brought in State court was **removed** properly invoked jurisdiction of **federal court**, it was immaterial to subject-matter jurisdiction of **federal court** that original complaint may not have stated **removable** claim. People of State of Ill. ex rel. Barra v. Archer Daniels Midland Co., C.A.7 (Ill.) 1983, 704 F.2d 935. **Removal** Of Cases 11

Defendant did not prematurely **remove** plaintiff's state court suit asserting state law claims for slander and tortious interference with an expectancy, despite the fact that state court had not yet ruled on plaintiff's motion to amend the complaint, which amendment placed defendant on notice that the amount in controversy was in excess of $75,000 thereby establishing federal diversity jurisdiction; plaintiff stated in his motion to amend and proposed amended complaint that he now intended to seek

damages in excess of $75,000, his ability and intention to seek that amount of damages would not have been affected by state court's disposition of motion to amend, and plaintiff did not seek to add any additional claims, but instead sought only to add a nominal party, which would not have had an effect on diversity jurisdiction. Hill v. Allianz Life Ins. Co. of North America, M.D.Fla.2014, 51 F.Supp.3d 1277. **Removal** of Cases 79(1)

Insured's heir and physician, whose state law and ERISA causes of action against health insurer were **removed** on basis of ERISA preemption, were not entitled to remand of action to state court after filing amended complaint eliminating the ERISA cause of action. Quaresma v. BC Life & Health Ins. Co., E.D.Cal.2007, 623 F.Supp.2d 1110. **Removal** Of Cases 15; **Removal** Of Cases 25(1)

Ordinarily, a plaintiff cannot defeat **removal** by amending the complaint to omit the basis for federal jurisdiction. Moscovitch v. Danbury Hosp., D.Conn.1998, 25 F.Supp.2d 74. **Removal** Of Cases 25(1)

Where defendants premised **removal** on grounds of original jurisdiction but plaintiff's state court complaint made no reference to Constitution, treaties or laws of the United States, district court lacked subject matter jurisdiction and remand was required; plaintiff could not keep improperly **removed** case in federal forum by amending complaint. Lengyel v. Sheboygan County, E.D.Wis.1995, 882 F.Supp. 137, on remand 570 N.W.2d 61, 212 Wis.2d 639. **Removal** Of Cases 102

Once properly **removed** to **federal court** based on federal question jurisdiction, simple act of amending complaint to strike all federal claims does not automatically **remove** case from district court's purview, but district court has discretion to remand supplemental state law claims after plaintiff has dropped federal claims on which **removal** was originally based. Brock v. DeBray, M.D.Ala.1994, 869 F.Supp. 926. **Removal** Of Cases 101.1

Once **removal** is effected, state court's jurisdiction over case ceases; thus, amended complaints filed in state court have no effect in cases previously **removed** to **federal court**. Coughlin v. Nationwide Mut. Ins. Co., D.Mass.1991, 776 F.Supp. 626. **Removal** Of Cases 97

Plaintiff may not amend a complaint after **removal** solely to defeat federal jurisdiction. Johnson v. First Federal Sav. and Loan Ass'n of Detroit, E.D.Mich.1976, 418 F.Supp. 1106. **Removal** Of Cases 118

Amendment of complaint after **removal** to delete allegations relating to claim under federal statute does not serve to defeat federal jurisdiction if the case was properly **removable** on the record as it stood at the time the petition for **removal** was filed. Armstrong v. Monex Intern., Ltd., N.D.Ill.1976, 413 F.Supp. 567. **Removal** Of Cases 102

Developments in the lawsuit or attempted amendments to the pleadings subsequent to **removal** of the suit from state court to **federal court** cannot serve to confer **federal court** jurisdiction if none in fact existed as of the time of **removal**. Wamp v. Chattanooga Housing Authority, E.D.Tenn.1974, 384 F.Supp. 251, affirmed 527 F.2d 595, certiorari denied 96 S.Ct. 2203, 425 U.S. 992, 48 L.Ed.2d 816. **Removal** Of Cases 81

Generally, right of **removal** is decided by the pleadings, viewed as of time when petition for **removal** is filed, so that if defendants were entitled to **removal** on date permitted, an amendment allowed to plaintiff at a later date would not force a remand. Jacks v. Torrington Co., D.C.S.C.1966, 256 F.Supp. 282. **Removal** Of Cases 118

In determining **removability** of case and whether or not it should be remanded, it is not necessary to look to any amendments to complaint filed after **removal**. Suggs v. Brotherhood of Locomotive Firemen and Enginemen, M.D.Ga.1960, 219 F.Supp. 770. **Removal** Of Cases 107(4)

Question whether amended complaint filed by Montana plaintiff in diversity case which had been instituted against Delaware defendant and Montana defendant and which had been **removed** to **federal court**, stated cause of action against the Montana

defendant, in which event the plaintiff would be entitled to have case remanded to Montana State court, would be determined according to plaintiff's pleadings at time of **removal** to **federal court**. Thompson v. Mobil Producing Co., D.C.Mont.1958, 163 F.Supp. 402. **Removal** Of Cases 107(4)

Existence of **removal** jurisdiction depends upon facts as they existed both at time action was commenced and at time of **removal**, and generally any attempt by plaintiff to alter his claim, after **removal** jurisdiction has attached, in such a manner as to **remove** basis for federal jurisdiction will be ineffectual to oust **federal court** of jurisdiction. Ingersoll v. Pearl Assur. Co., N.D.Cal.1957, 153 F.Supp. 558. **Removal** Of Cases 47; **Removal** Of Cases 118

Fact that court **removed** case and exercised diversity jurisdiction over claims brought by class of Pennsylvania vehicle purchasers, alleging that vehicle manufacturer fraudulently concealed that vehicle's oil change indicator system caused premature wear to vehicle if conventional oil was used, did not permit purchasers to amend their complaint, post-**removal**, to create a class of nationwide purchasers; while Pennsylvania's Unfair Trade Practices and Consumer Protection Laws (UTPCPL) allowed purchasers to seek treble damages, so that amount in controversy was satisfied, some new class members were from jurisdictions where state's consumer protection statute limited recovery to actual damages. O'Keefe v. Mercedes-Benz USA, LLC, E.D.Pa.2003, 214 F.R.D. 266. **Removal** Of Cases 118

Determination of subject matter jurisdiction is based on plaintiff's complaint at time of **removal**, and any jurisdictional infirmities may not later be cured by amendment. Carway v. Progressive County Mut. Ins. Co., S.D.Tex.1995, 183 B.R. 769. **Removal** Of Cases 25(1); **Removal** Of Cases 118

Removal petition--Generally

Negligence claims, asserted under South Carolina law, against assisted living facility and its owners, by personal representative of estate of resident who died of COVID-19, did not fall within scope of Public Readiness and Emergency Preparedness (PREP) Act's exclusive cause of action for willful misconduct, and thus claims were not completely preempted by the PREP Act and could not be **removed** to **federal court**; claims failed to even imply that defendants acted intentionally to achieve a wrongful purpose. Corbett v. Longwood Plantation-FHE, LLC, D.S.C.2023, 2023 WL 3747847. Health 607; Health 768; **Removal** of Cases 25(1); States 18.15

Pharmaceutical companies' notice of **removal**, on diversity grounds, of products liability action brought by antimalarial drug user was not procedurally defective, despite initially failing to allege citizenship of distributor, where companies filed notice of errata and amended notice of **removal** alleging distributor's citizenship, notwithstanding that amended notice was tendered outside 30 day **removal** period. Pool v. F. Hoffman-La Roche, Ltd., N.D.Cal.2019, 386 F.Supp.3d 1202. **Removal** of Cases 94

If petition for **removal** alleges facts which, if true, are legally insufficient, when considered along with allegations of complaint, to establish existence of federal jurisdiction, case must be remanded forthwith. Wright v. Continental Cas. Co., M.D.Fla.1978, 456 F.Supp. 1075. **Removal** Of Cases 107(4)

For case to be **removed** from state court, **federal court** must possess prima facie jurisdiction from the **removal** petition alone. Electronic Data Systems Corp. v. Kinder, N.D.Tex.1973, 360 F.Supp. 1044, affirmed 497 F.2d 222. **Removal** Of Cases 86(1)

Petition to **remove** case from state to **federal court** need not show on its face allegations necessary to support **removal** where they are supplied by the state court record and supporting exhibits. Haggard v. Lancaster, N.D.Miss.1970, 320 F.Supp. 1252. **Removal** Of Cases 86(1)

---- Effect of filing, removal petition

Court does not treat **removal** petition in civil action as motion or application to be denied or granted, but, rather, filing petition has effect of **removing** action to district court subject to remand or dismissal. Mercy Hosp. Ass'n v. Miccio, E.D.N.Y.1985, 604 F.Supp. 1177. **Removal** Of Cases 95

Subject to possibility of remand, action was **removed** automatically when copy of petition for **removal** was filed with state court, and thus, proceedings would not be stayed until **federal court** determined whether the **removal** "shall be sustained." Buck v. Union Trustees of Plumbers and Pipefitters Nat. Pension Fund of Plumbers and Pipefitters Intern., E.D.Tenn.1975, 70 F.R.D. 530. **Removal** Of Cases 89(1)

---- Failure to cite this section, removal petition

Amtrak's allegations that **federal court** had original jurisdiction due to United States' ownership of more than one half of its capital stock and that it had been joined to wrongful death suit as third-party defendant by railroad justified **removal**, even though section of statute under which **removal** was sought was not cited in notice of **removal**. Wormley v. Southern Pacific Transp. Co., E.D.Tex.1994, 863 F.Supp. 382. **Removal** Of Cases 84

Failure to allege a specific section of a statute, permitting **removal** of civil actions of which district courts have original jurisdiction, as basis for **removal** jurisdiction was technical error and court would consider **removal** petition amended so as to allege jurisdiction properly under such statute, where the facts alleged to support **removal** jurisdiction were not changed and no additional grounds were alleged. Harper v. National Flood Insurers Ass'n, M.D.Pa.1980, 494 F.Supp. 234. **Removal** Of Cases 94

Failure of contractor's petition for **removal** of action brought by parent union and local to cite this section stating which actions are **removable** did not render the petition defective where the petition contained the facts as required by this section. International Union of Operating Engineers, Local 400 v. Sletten Const. Co., D.C.Mont.1974, 383 F.Supp. 855. **Removal** Of Cases 25(1)

Petition of Export-Import Bank of Washington for **removal** of action against it was deemed amended to provide for **removal** in the alternative pursuant to this section relating to actions in which the district courts of the United States have original jurisdiction, notwithstanding failure of original petition for **removal** to cite this section as ground for **removal**. Harlem River Produce Co. v. Aetna Cas. & Sur. Co., S.D.N.Y.1965, 257 F.Supp. 160. **Removal** Of Cases 94

---- Amendments, removal petition

Removal petitions cannot be amended after the 30-day period allowed to file notice to add allegations of substance but solely to clarify defective allegations of jurisdiction previously made. Sullivan v. BNSF Ry. Co., D.Ariz.2006, 447 F.Supp.2d 1092. **Removal** Of Cases 94; **Removal** Of Cases 107(6)

Where necessary "factual allegations" omitted from petition for **removal** were inherent in allegations of cross complaint with respect to which **removal** was sought, change from this section with respect to actions **removable** generally to § 1442 of this title, which is applicable where federal officers are sued as a basis for **removal** was merely a clarification of a defective allegation, and thus such amendment to the **removal** petition would be allowed. National Audubon Soc. v. Department of Water & Power of City of Los Angeles, E.D.Cal.1980, 496 F.Supp. 499. **Removal** Of Cases 94

---- Time for filing, removal petition

Mortgage assignee's **removal** of mortgagors' action, alleging violations of Texas constitutional provisions on home equity loans, after entry of default judgment was timely; assignee neither appeared nor participated in the state court litigation until it filed its notice of **removal** after it learned of default judgment, assignee asserted throughout the litigation that it was not properly served, and time for direct appellate review under Texas law had not run, since assignee was entitled to file restricted appeal in state court within six months of entry of judgment. Thompson v. Deutsche Bank Nat. Trust Co., C.A.5 (Tex.) 2014, 775 F.3d 298. **Removal** of Cases 79(1)

State of Wisconsin's suit brought in state court against pharmaceutical manufacturer for allegedly fraudulent pricing was not **removable** upon third notice of **removal** filed more than two years after suit was filed, on grounds of subsequent filing of qui tam suit against manufacturer in remote district court, under False Claims Act (FCA), since Wisconsin's suit alleged violation of state law, not federal law, parties lacked diversity, Wisconsin's suit was not related to qui tam suit, within meaning of FCA, qui tam complaint was not amended pleading, motion, order, or other paper from which **removability** could first be ascertained in suit sought to be **removed**, and judicial economies did not warrant **removal** as there would be no joint trial. Wisconsin v. Amgen, Inc., C.A.7 (Wis.) 2008, 516 F.3d 530. **Removal** Of Cases 19(1); **Removal** Of Cases 29; **Removal** Of Cases 79(1)

Time limit for filing notice of **removal** in district court is triggered when writ of summons, praecipe, or complaint provides adequate notice to defendant of federal jurisdiction. Foster v. Mutual Fire, Marine & Inland Ins. Co., C.A.3 (Pa.) 1993, 986 F.2d 48. **Removal** Of Cases 79(1)

Insurer's petition to **remove** suit by beneficiary to recover under group insurance policies was timely filed when, although petition was filed more than 30 days after receipt of complaint, it was filed on day when beneficiary finally dismissed action as to fictitious defendants who had not been served. Preaseau v. Prudential Ins. Co. of America, C.A.9 (Cal.) 1979, 591 F.2d 74. **Removal** Of Cases 79(1)

Stamp on return receipt card for complaint mailed to corporation and delivered to post office box in another state did not satisfy signature requirement of Pennsylvania rule that the receipt for service by mail be signed by the defendant or an authorized agent, and, thus, the mailing did not start clock on 30-day period to **remove** case to **federal court**. Washington v. LM General Insurance Company, E.D.Pa.2022, 2022 WL 1121032. **Removal** of Cases 79(1)

Under the last-served rule, each defendant has its own 30-day clock for the **removal** of cases to **federal court** on the basis of diversity jurisdiction. Bonner v. Fuji Photo Film, N.D.Cal.2006, 461 F.Supp.2d 1112. **Removal** Of Cases 79(1)

In a case where the complaint does not clearly indicate the basis for **removal**, the 30-day window for the **removal** of cases to **federal court** on the basis of diversity jurisdiction starts running when the defendant receives a motion, order, or other paper putting them on notice that the case is **removable**. Bonner v. Fuji Photo Film, N.D.Cal.2006, 461 F.Supp.2d 1112. **Removal** Of Cases 79(1)

Because employee's amended petition did not clearly state a federal question and it could not be ascertained until employee's answers to employer's first set of interrogatories that case was **removable**, employment discrimination litigation was timely **removed** to **federal court** and would not be remanded; references to Title VII and ADA in "Conditions Precedent" section of amended petition appeared to relate to employee's anticipation of avoidance of defenses and were not allegations that affirmatively stated claim under federal law, employee's reference to his Equal Employment Opportunity Commission (EEOC) claim did not in itself affirmatively invoke federal question jurisdiction, and general statement in the "Conditions Precedent" section that he was seeking damages "under each of the foregoing acts and codes" did not, in absence of any reference to federal cause of action in his "Nature of Action" section or any other section in amended pleading, affirmatively reveal that he had stated a federal claim. Maheshwari v. University of Texas-Pan American, S.D.Tex.2006, 460 F.Supp.2d 808. **Removal** Of Cases 25(1); **Removal** Of Cases 79(1); **Removal** Of Cases 103

Notice of **removal** that was not filed until nearly four years after state court suit was initiated was not timely, notwithstanding that defendants filed **removal** notice within 30-day period after timely **removal** of their allegedly related, separate state court suit by defendants in that case; **removal** of one case did not make other **removable**. Cardillo v. Cardillo, D.R.I.2005, 360 F.Supp.2d 402. **Removal** Of Cases 79(1)

Removal petition not filed within 30 days after receipt of at-issue memorandum in which it was represented to court that all essential parties had been served with process or had appeared and that no other parties would be served with summons was not timely filed, and action would be remanded to state court. Barngrover v. M.V. Tunisian Reefer, C.D.Cal.1982, 535 F.Supp. 1309. **Removal** Of Cases 79(1); **Removal** Of Cases 103

Whether petition to **remove** state action to **federal** **court** is filed within 30 days as statutorily required is not the test of **removability**. Her Majesty Industries, Inc. v. Liberty Mut. Ins. Co., D.C.S.C.1974, 379 F.Supp. 658. **Removal** Of Cases 79(1)

Petition in state court for an order to arbitrate was the commencement of a civil action in which motion to confirm award was made and timely petition for **removal** of action was not filed within 30-day period, which commenced to run from date of first court action relating to the arbitration. Lesser Towers, Inc. v. Roscoe-Ajax Const. Co., S.D.Cal.1966, 258 F.Supp. 1005. **Removal** Of Cases 79(1)

Burden of proof

Burden to establish federal jurisdiction, in connection with **removal** of case from state court, lies with **removing** party. Alexander v. Electronic Data Systems Corp., C.A.6 (Mich.) 1994, 13 F.3d 940, on remand 870 F.Supp. 749. **Removal** Of Cases 107(7)

Party invoking **removal** statute has burden of establishing federal jurisdiction. Holcomb v. Bingham Toyota, C.A.9 (Cal.) 1989, 871 F.2d 109, certiorari denied 110 S.Ct. 141, 493 U.S. 846, 107 L.Ed.2d 100. **Removal** Of Cases 107(7)

Burden of establishing federal jurisdiction is placed on the party seeking **removal**. Willy v. Coastal Corp., C.A.5 (Tex.) 1988, 855 F.2d 1160. **Removal** Of Cases 107(7)

The burden is on the party seeking to **remove** case to **federal** **court** to establish his right and the case should be remanded if there is doubt as to the right of **removal** in the first instance. Jones v. General Tire & Rubber Co., C.A.7 (Ind.) 1976, 541 F.2d 660. **Removal** Of Cases 107(7)

Removing defendant has the burden of establishing that **removal** is proper. ICON MW, LLC v. Hofmeister, S.D.N.Y.2013, 950 F.Supp.2d 544, on remand 2017 WL 150651. **Removal** of Cases 107(7)

The defendant always bears the burden of establishing that **removal** is proper, and the court resolves all ambiguity in favor of remand. Merced Irr. Dist. v. County of Mariposa, E.D.Cal.2013, 941 F.Supp.2d 1237. **Removal** of Cases 107(7)

The **removing** defendant bears the burden of establishing jurisdiction and compliance with all pertinent procedural requirements, and any doubts should be resolved in favor of remand. Costa v. Verizon New Jersey, Inc., D.N.J.2013, 936 F.Supp.2d 455. **Removal** of Cases 107(7)

Where jurisdiction is asserted by a defendant in a **removal** petition, defendant has the burden of establishing that **removal** is proper. Veneruso v. Mount Vernon Neighborhood Health Center, S.D.N.Y.2013, 933 F.Supp.2d 613, affirmed 586 Fed.Appx. 604, 2014 WL 1776011. **Removal** of Cases 107(7)

Burden of establishing federal jurisdiction is placed upon party seeking **removal**. Campbell v. Hampton Roads Bankshares, Inc., E.D.Va.2013, 925 F.Supp.2d 800. **Removal** of Cases 107(7)

With respect to **removal**, burden of proving the court's jurisdiction rests on the party asserting jurisdiction; district court must remand a case to state court if at any time before final judgment it appears that the district court lacks subject matter jurisdiction. In re Facebook, Inc., IPO Securities and Derivative Litigation, S.D.N.Y.2013, 922 F.Supp.2d 475. **Removal** of Cases 102; **Removal** of Cases 107(7)

When a defendant **removes** an action from state court on the grounds that the **federal court** may properly exercise diversity jurisdiction over the action, the defendant bears the burden of establishing federal jurisdiction, including satisfaction of the amount-in-controversy requirement. Reames v. AB Car Rental Services, Inc., D.Or.2012, 899 F.Supp.2d 1012. **Removal** of Cases 107(7)

The party seeking to **remove** the case bears the burden of establishing the existence of federal jurisdiction. Poffenbarger v. Hawaii Management Alliance Ass'n, D.Hawai'i 2012, 892 F.Supp.2d 1288. **Removal** of Cases 107(7)

The **removing** party bears the burden of establishing the existence of subject matter jurisdiction. Dunbar v. Wells Fargo Bank, N.A., D.Minn.2012, 853 F.Supp.2d 839, as amended, affirmed 709 F.3d 1254, rehearing and rehearing en banc denied. **Removal** of Cases 107(7)

As party **removing** case, defendant has the burden to prove that **federal court** jurisdiction is proper at all stages of litigation. Stephens v. Gentilello, D.N.J.2012, 853 F.Supp.2d 462. **Removal** of Cases 107(7)

Moving party possesses the burden of showing that **removal** was proper and that the action is properly before the **federal court**. Shupp v. Reading Blue Mountain, M.D.Pa.2012, 850 F.Supp.2d 490. **Removal** of Cases 107(7)

When a notice of **removal** is presented, defendants have the burden of showing the **federal court's** jurisdiction. Colon-Rodriguez v. Astra/Zeneca Pharmaceuticals, LP, D.Puerto Rico 2011, 831 F.Supp.2d 545. **Removal** of Cases 107(7)

If a defendant proves the necessary jurisdictional facts by a preponderance of the evidence, any uncertainty about whether the plaintiff can prove his claim or whether damages will ultimately exceed the threshold amount does not justify dismissal or remand. Herndon v. American Commerce Ins. Co., N.D.Okla.2009, 651 F.Supp.2d 1266. **Removal** Of Cases 102; **Removal** Of Cases 107(7); **Removal** Of Cases 108

Party seeking **removal** of action bears the burden to demonstrate the appropriateness of **removal** from state to **federal court**. Geismann v. Aestheticare, LLC, D.Kan.2008, 622 F.Supp.2d 1091. **Removal** Of Cases 107(7)

The **removing** party bears the heavy burden of proving that non-diverse defendants have been fraudulently joined to defeat diversity, either by showing that (1) there has been outright fraud in the plaintiff's recitation of jurisdictional facts, or (2) there is no possibility that the plaintiff would be able to establish a cause of action against the non-diverse defendants in state court. Bourne v. Wal-Mart Stores, Inc., E.D.Tex.2008, 582 F.Supp.2d 828. **Removal** Of Cases 36; **Removal** Of Cases 107(7)

Burden of establishing federal subject matter jurisdiction is on party who **removed** action from state court. Hannibal v. Federal Express Corp., E.D.Va.2003, 266 F.Supp.2d 466. **Removal** Of Cases 107(7)

Removing party has the burden of proving that subject matter jurisdiction exists. Keith v. Clarke American Checks, Inc., W.D.N.C.2003, 261 F.Supp.2d 419. **Removal** Of Cases 107(7)

Party seeking to litigate in **federal court** bears the burden of establishing the existence of federal subject matter jurisdiction; this is no less true where it is the defendant, rather than the plaintiff, who seeks the federal forum. Gover v. Speedway Super America, LLC, S.D.Ohio 2002, 254 F.Supp.2d 695. **Federal Courts** 2081; **Removal** Of Cases 107(7)

Party seeking **removal** bears burden to establish federal jurisdiction. Alessi v. Beracha, D.Del.2003, 244 F.Supp.2d 354, on remand 849 A.2d 939. **Removal** Of Cases 107(7)

Party seeking **removal** has the burden of showing federal subject matter jurisdiction; as a general rule, when a plaintiff alleges a specific amount of damages in the complaint, that amount controls unless the defendant proves to a legal certainty that plaintiff in good faith cannot claim the jurisdictional amount for diversity jurisdiction. Egan v. Premier Scales & Systems, W.D.Ky.2002, 237 F.Supp.2d 774. **Removal** Of Cases 75; **Removal** Of Cases 107(7)

Party **removing** a case to **federal court** bears the burden of proving that the court has jurisdiction; if **removal** is predicated on allegations that a non-diverse party has been fraudulently joined, then the **removing** party must establish the existence of fraudulent joinder. Bellorin v. Bridgestone/Firestone, Inc., W.D.Tex.2001, 236 F.Supp.2d 670. **Removal** Of Cases 107(7)

Burden of establishing federal jurisdiction through **removal** is placed upon party seeking **removal**, and any doubts are resolved in favor of retained state court jurisdiction. Oxendine v. Merck and Co., Inc., D.Md.2002, 236 F.Supp.2d 517, on remand 2003 WL 24258219. **Removal** Of Cases 107(7)

Party who is attempting to establish federal jurisdiction bears burden of proof if diversity of relationship is challenged. Hanna v. Fleetguard, Inc., N.D.Iowa 1995, 900 F.Supp. 1110. **Federal Courts** 2477

Party seeking **removal** and opposing remand has burden of establishing federal subject matter jurisdiction. Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. 990C80656 v. Amoco Oil Co., N.D.Iowa 1995, 883 F.Supp. 403. **Removal** Of Cases 107(7)

Burden of establishing federal jurisdiction is upon party seeking **removal**. Handyman Network, Inc. v. Westinghouse Savannah River Co., Inc., D.S.C.1994, 868 F.Supp. 151. **Removal** Of Cases 107(7)

Party seeking **removal** has burden of establishing federal jurisdiction. Donald I. Galen, M.D., Inc. v. McAllister, N.D.Cal.1992, 833 F.Supp. 761. **Removal** Of Cases 107(7)

Failure to object to improper removal--Generally

Plaintiff did not waive right to object to impropriety of **removal** on diversity grounds even though plaintiff did not object when defendant filed petition for **removal** on federal question grounds. Hurt v. Dow Chemical Co., C.A.8 (Mo.) 1992, 963 F.2d 1142, rehearing denied. **Removal** Of Cases 106

Because **removal** was not challenged, any irregularity in the **removal** procedures was waived. Medlin v. Boeing Vertol Co., C.A.3 (Pa.) 1980, 620 F.2d 957. **Removal** Of Cases 94

Student, who allegedly sustained a concussion when fellow student body-checked her from behind in campus dining hall, waived challenge to any failure by university to satisfy unanimity requirement for **removal** based on federal question jurisdiction, in student's action against university alleging negligence and violation of Rehabilitation Act, where student did not object to **removal** within statutorily required 30-day period, rather she participated in litigation by opposing university's motion to dismiss and appearing at scheduling conference. Schaefer v. Yongjie Fu, D.Mass.2018, 322 F.Supp.3d 207. **Removal** of Cases 82

Where any procedural irregularities or defects in **removal** of cause from Missouri Circuit Court had not been objected to such irregularities or defects were waived. Bennett Const. Co., Inc. v. Allen Gardens, Inc., W.D.Mo.1977, 433 F.Supp. 825. **Removal** Of Cases 94

---- Prosecution in federal court, failure to object to improper removal

Plaintiff's continued prosecution of case in **federal court** for approximately one year after **removal**, and failure to seek remand until after judgment had been rendered, constituted implicit consent to **federal court** jurisdiction and waiver of right to object to **removal**. Farm Const. Services, Inc. v. Fudge, C.A.1 (Mass.) 1987, 831 F.2d 18. **Removal** Of Cases 81

A party who delays in seeking a remand, or otherwise participates in proceedings in district court, may be precluded from objecting to defendant's untimely consent to defective **removal** petition. Harris v. Edward Hyman Co., C.A.5 (Miss.) 1981, 664 F.2d 943, rehearing denied 669 F.2d 733. **Removal** Of Cases 94

Removal of case from state court was technically improper, though federal subject matter jurisdiction existed since the parties were citizens of different states and the amount in controversy apparently exceeded $10,000 [now $75,000], where defendant was resident of state in whose courts action was originally brought; but where plaintiff proceeded in **federal court** without objection, he waived his right to seek remand to state courts. Stromberg v. Costello, D.C.Mass.1978, 456 F.Supp. 848. **Removal** Of Cases 106

---- Timeliness of objection, failure to object to improper removal

Plaintiff waived objection to **removal**, that two named defendants were citizens of state in which action was brought, where plaintiff failed to make appropriate objection on that basis until after summary judgment was granted for defendants, even though plaintiff had objected to **removal** before summary judgment on nonmeritorious ground of lack of diversity of citizenship. Hartford Acc. & Indem. Co. v. Costa Lines Cargo Services, Inc., C.A.5 (La.) 1990, 903 F.2d 352. **Removal** Of Cases 94

Although action filed in state court was improperly **removed** to federal district court, where federal district court would have had jurisdiction had action been brought originally in **federal court**, plaintiff's failure to timely object to improper **removal** constituted waiver of objection. Petty v. Ideco, Div. of Dresser Industries, Inc., C.A.5 (Tex.) 1985, 761 F.2d 1146. **Removal** Of Cases 94

Although employer's **removal** petition was defective when filed in that it was not joined in by union, which was defendant with employer in employee's action for restitution and to enforce provisions of collective bargaining agreement, employee waived her objections to both procedural irregularities contained in **removal** petition and union's untimely consent to **removal** by failing to assert promptly her objections to defects in petition and by proceeding with discovery. Harris v. Edward Hyman Co., C.A.5 (Miss.) 1981, 664 F.2d 943, rehearing denied 669 F.2d 733. **Removal** Of Cases 94

University student waived his objection to university and university police officer's defective **removal** of his state court action asserting claims under § 1983 and state law to the Northern District of New York, where university was located, rather than to the Southern District of New York, where student resided and where he filed his state court suit; student did not timely object within 30 days of **removal** and his counsel took affirmative steps to move the case forward in the Northern District, including seeking admission to the Court, participating in preliminary discovery, serving his initial disclosures and submitting a case management plan. Orden v. Cornell University, N.D.N.Y.2017, 243 F.Supp.3d 287. **Removal** of Cases 94

Failure to timely move that action **removed** to **federal court** on diversity grounds be remanded to state court, based upon one defendant's being citizen of state in which action was brought, waived plaintiffs' right to have action remanded on such grounds; district court's diversity jurisdiction was undisputed and motion to remand on such grounds was not made until

after substantial amount of discovery had taken place, much of which required action by federal district court or magistrate. Commercial Associates v. Tilcon Gammino, Inc., D.R.I.1987, 670 F.Supp. 461. **Removal** Of Cases 107(1)

Plaintiff did not, by waiting more than two months after **removal** before indicating attempt to seek remand, waive right to object to **removal**; plaintiff indicated intent to seek remand at first status conference noticed by district court subsequent to **removal**, and case was not one in which plaintiff delayed service on defendants in attempt to frustrate **removal**. Nannuzzi v. King, S.D.N.Y.1987, 660 F.Supp. 1445. **Removal** Of Cases 94

Nonresident plaintiff did not waive its right to object to improper **removal** of case to **federal court** by resident defendant even though 15 months had elapsed between **removal** and plaintiff's petition for remand where statute of limitations had not run on antitrust violations asserted in defendant's counterclaim and, therefore, delay did not cause prejudice or hardship to defendant. American Oil Co. v. Egan, D.C.Minn.1973, 357 F.Supp. 610. **Removal** Of Cases 94

Waiver--Generally

Insurer did not waive right to **remove**, in insured's action seeking declaration of rights under excess indemnity insurance policy; insurer took no action in case in state court prior to **removing** it. City of Vista v. General Reinsurance Corporation, S.D.Cal.2018, 295 F.Supp.3d 1119. **Removal** of Cases 17

In consumer's unfair trade practices action against producer of dietary supplements, fact that consumer engaged in discovery after **removal** did not amount to waiver of consumer's right to remand; parties only engaged in some discovery, and consumer's motion to remand was based on argument that district court lacked subject matter jurisdiction. Witte v. General Nutrition Corporation, D.D.C.2015, 104 F.Supp.3d 1. **Removal** of Cases 106

Plaintiff waived any argument that exception to general rule allowed post-**removal** amendment of her complaint to correct defects that supported finding of fraudulent joinder, where she made no argument to that effect. Estates of Briney ex rel. Clay v. Mr. Heater Corp., W.D.Wis.2009, 602 F.Supp.2d 997. **Removal** Of Cases 118

Defendants' filing of demurrer in state court directed at equitable lien claim against their property and seeking release of plaintiff's lis pendens securing equitable lien, was not "substantial defensive action" in effort to obtain final determination on merits of breach of contract suit, demonstrating defendants' clear and unequivocal intent to remain in state court, as required for waiver of defendants' right of **removal** to **federal court**, where state court did hear argument on demurrer but did not rule on that issue, defendants withdrew demurrer prior to **removal**, and equitable lien claim did not go to merits of case but rather was effort to secure means of recovery for alleged breach of contract. Drexler v. Inland Management Corp., E.D.Va.2007, 509 F.Supp.2d 560. **Removal** Of Cases 17

Employer did not, solely by invoking its statutory right to federal diversity jurisdiction and **removing** employee's case to **federal court**, waive its right to invoke arbitration clause which employee had agreed to. Baker v. Securitas Security Services USA, Inc., D.Me.2006, 432 F.Supp.2d 120. Alternative Dispute Resolution 182(2)

A general appearance alone, in which there is no request for affirmative relief, no litigation on merits, and no prejudice to any of parties, does not amount to waiver of right to **remove**. Carpenter v. Illinois Cent. Gulf R. Co., M.D.La.1981, 524 F.Supp. 249. **Removal** Of Cases 17

---- Sovereign immunity, waiver

Federally recognized Indian tribe does not waive its sovereign immunity from suit by exercising its right to **remove** to **federal court** a case filed against it in state court; abrogating *State Engineer of State of Nevada v. South Fork Band of Te-Moak Tribe of*

Western Shoshone Indians of Nevada, 66 F.Supp.2d 1163. Bodi v. Shingle Springs Band of Miwok Indians, C.A.9 (Cal.) 2016, 832 F.3d 1011. Indians 235; **Removal** of Cases 95

---- Delay in filing removal petition, waiver

By failing to file petition to **remove** action under food stamp program from state court to **federal court** within ten months after receiving notice of suit, government forfeited its right of **removal**. Wilson v. U.S. Dept. of Agriculture, Food and Nutrition Service, C.A.6 (Ky.) 1978, 584 F.2d 137. **Removal** Of Cases 79(1)

Had nonresident defendant waited until unfavorable jury decision before filing **removal** petition it would have waived the right to **remove** by failing to immediately advise the state court of its intention and to immediately file its **removal** petition, and the nonresident defendant in fact waived its right to **remove** by waiting until mistrial due to deadlock jury was declared before seeking **removal**. Aynesworth v. Beech Aircraft Corp., W.D.Tex.1985, 604 F.Supp. 630. **Removal** Of Cases 17

---- Forum selection clauses, waiver

Foreign insurance company waived right to **remove** state court action for breach of contract to **federal court** by entering into reinsurance agreement, which required company to submit to jurisdiction of any court of competent jurisdiction chosen by other party, whether it be to determine arbitrable nature of dispute, to confirm arbitration award, to compel arbitration, or to resolve on merits, claim not subject to arbitration. Pine Top Receivables of Illinois, LLC v. Transfercom, Ltd., C.A.7 (Ill.) 2016, 836 F.3d 784. **Removal** of Cases 17

Clause in contract between city and contractor in which contractor agreed "to the jurisdiction of the State Civil Courts of the Parish of Orleans," and waived "any pleas of jurisdiction on account of the residence elsewhere of the undersigned Contractor," did not constitute a clear and unambiguous waiver of right to **remove** case to **federal court**, as clause was susceptible to more than one reasonable interpretation; clause could be read as evincing consent to personal jurisdiction in Louisiana state courts but not to those courts being the exclusive venue for suits arising from the contract. City of New Orleans v. Municipal Administrative Services, Inc., C.A.5 (La.) 2004, 376 F.3d 501, certiorari denied 125 S.Ct. 1396, 543 U.S. 1187, 161 L.Ed.2d 189. **Removal** Of Cases 17

Forum selection clause in hotel management contract, which did not explicitly refer to right of **removal**, did not constitute waiver of such right. Regis Associates v. Rank Hotels (Management) Ltd., C.A.6 (Mich.) 1990, 894 F.2d 193. Contracts 206

Forum-selection clause in employee's employment agreement with employer waived procedural defect in **removal** of action against employer, namely, the "resident defendant rule" or "forum defendant rule," since employee contractually agreed to litigate any disputes arising out of the employment agreement in **federal court**; lack of diversity of citizenship normally would have destroyed federal jurisdiction, but employee agreed to litigate claims against employer in **federal court** by signing agreement with forum selection clause, which was unambiguous, present and apparent at time parties signed the agreement, and plainly indicated that employee waived forum defendant defect in **removal**. Uboh v. United States Equestrian Foundation, E.D.Ky.2019, 384 F.Supp.3d 780. Contracts 206; **Federal Courts** 2857; **Removal** of Cases 17

Former employee waived right to **remove** former employer's action, alleging that employee violated non-compete and non-solicitation provisions of employment agreement, from state court to **federal court**; language used in forum selection clause in employment agreement between employer and employee stating that, "any dispute between the parties will be adjudicated only in the state court," and that the county in which the state court was located, "will be the exclusive venue for resolving such disputes," was sufficiently clear and unequivocal waiver of right to **remove**. Valspar Corporation v. Sherman, D.Minn.2016, 211 F.Supp.3d 1209. **Removal** of Cases 17

Venue in Southern District of Iowa was not only proper, but was compelled by statute governing venue of **removed** cases, and, thus, buyer was precluded from challenging venue on motion to dismiss for improper venue based on forum selection clause in parties' contract for sale of goods, in seller's **removed** breach of contract action against buyer, where case was filed in Iowa District Court for Scott County, which was located in Southern District of Iowa, and buyer properly **removed** case to Southern District of Iowa. Micro-Surface Finishing Products, Inc. v. SDI, Inc., S.D.Iowa 2015, 97 F.Supp.3d 1077. Contracts 127(4); **Removal** of Cases 14

Consulting service agreement's forum selection clause clearly and unequivocally waived client's right to **removal** of consultant's breach of contract suit; clause mandated that "venue for any claim, controversy, or dispute which arises between the parties from or related to this Agreement shall be the Superior Court of the District of Columbia," and further provided that "parties hereby consent to the jurisdiction of such court and waive any objection to such venue." Carmen Group, Inc. v. Xavier University of Louisiana, D.D.C.2014, 41 F.Supp.3d 8, issued 2014 WL 12942236, appeal dismissed 2014 WL 3015228. Contracts 206; **Removal** of Cases 17

Forum selection clause in letter subcontract made between general contractor and subcontractor, which provided that any controversy or claim "may be resolved by submitting the claim to a court of competent jurisdiction," was a "permissive forum selection clause," rather than one that was mandatory, since it contained vague, non-exclusive language, and therefore, provision was not an express waiver by defendant of its right to **remove** action; clause did not name a required court, judge, or jurisdiction where the case was required to be heard. L'Garde, Inc. v. Raytheon Space and Airborne Systems, C.D.Cal.2011, 805 F.Supp.2d 932. **Removal** of Cases 17

Promissory note's forum selection clause, which provided that borrowers submitted to "jurisdiction of any New York state or United States **federal court** sitting in New York City over any action or proceeding arising out of" note, did not constitute a clear and unequivocal waiver of borrowers' right to **remove** bank's action to recover $23 million outstanding from the $50 million promissory note; there were no clear indications in the clause that the borrowers had waived objections to venue in either state or federal forum, and clause contained no clear language of election, vesting in bank the right to choose a particular court. JP Morgan Chase Bank, N.A. v. Reijtenbagh, S.D.N.Y.2009, 611 F.Supp.2d 389. Contracts 206; **Removal** Of Cases 17

Although party has absolute statutory right to **remove** case to **federal court**, this right may be contractually waived by virtue of forum selection clause. Plum Creek Wastewater Authority v. Aqua-Aerobic Systems, Inc., D.Colo.2009, 597 F.Supp.2d 1228. Contracts 206; **Removal** Of Cases 17

Forum selection clause in patent license agreement, affording licensor option of submitting dispute to "any of the federal or state courts" having jurisdiction, and irrevocably waving any objection by non-resident licensee to jurisdiction, process or venue of such court, effectively precluded licensee from seeking **removal** of breach of contract action brought by licensor in state court. Koninklijke Philips Electronics v. Digital Works, Inc., S.D.N.Y.2005, 358 F.Supp.2d 328. **Removal** Of Cases 17

Forum selection clause in indenture issued by foreign state did not constitute clear and unequivocal waiver of state's right to **remove** investor's action to **federal court**, where clause only required state to submit to non-exclusive jurisdiction of "New York State or United States **federal court**." Rabbi Jacob Joseph School v. Province of Mendoza, E.D.N.Y.2004, 342 F.Supp.2d 124. **Removal** Of Cases 17

Forum selection clause under which insurers agreed to "submit to the jurisdiction of any Court of competent jurisdiction within the United States" at insureds' request in event of disputed claim constituted waiver of insurers' right to **remove** any such case to **federal court**, notwithstanding insurers' contention that clause was only service-of-suit provision. Archdiocese of Milwaukee v. Underwriters at Lloyd's, London, E.D.Wis.1997, 955 F.Supp. 1066. **Removal** Of Cases 17

Forum selection clause, providing that venue for disputes over contract "shall lie" in specified county, indicated clear and unequivocal waiver of nondrafting party's statutory right, as defendant in breach of contract action, to **remove** claim from state

court to **federal court** based on diversity of citizenship. Excell, Inc. v. Sterling Boiler & Mechanical, Inc., D.Colo.1996, 916 F.Supp. 1063, affirmed 106 F.3d 318. Contracts 127(4); **Removal** Of Cases 17

Party's consent to process and jurisdiction in particular forum does not necessarily constitute waiver of right of **removal** under federal diversity statute; in absence of specific waiver, question is whether choice-of-forum provision is intended to exclude **federal court** sitting in same state and is intended as a waiver of right of **removal** if basis for **removal** exists. City of New York v. Pullman Inc., S.D.N.Y.1979, 477 F.Supp. 438. **Removal** Of Cases 17

While service of suit clause does not in terms waive insurer's right to **remove** to federal forum, submission to state forum is waiver of insurer's right to defend in **federal court**. Perini Corp. v. Orion Ins. Co., E.D.Cal.1971, 331 F.Supp. 453. **Removal** Of Cases 17

Language of service of suit clause in insurance policy, whereby insurer agreed to submit to jurisdiction of any court of competent jurisdiction within United States and that matters arising under policy should be determined in accordance with law and practice of such court, showed intent to have matters in dispute determined by procedure of North Carolina courts rather than federal procedure, and to prevent **removal** to **federal court** by insurer. Roberts v. Lexington Ins. Co., E.D.N.C.1969, 305 F.Supp. 47. **Removal** Of Cases 17

---- Prosecution in state court, waiver

Defendants' filing of answer in state court action, which included a general denial and affirmative defenses as well as a reservation of the right to amend, did not constitute "substantial defensive action," and thus they did not waive their right to **remove**; reservation of the right to amend was not limited to amendment in state court. Haak Motors LLC v. Arangio, D.Md.2009, 670 F.Supp.2d 430. **Removal** Of Cases 17

Commonwealth and its State Elections Commission (SEC) did not waive right to **remove** suit by political association, challenging its rejection as representative of "Free Association" option on plebiscite ballot advising Congress of Commonwealth's preferred relationship to United States, by submitting answer, motion and memorandum requested by Commonwealth Superior Court, a show cause motion requested by Puerto Rico Supreme Court, and limited interrogatory; submissions were made to preserve status quo pending **removal**, rather than in furtherance of Commonwealth court litigation. Hernandez-Lopez v. Com. of Puerto Rico, D.Puerto Rico 1998, 30 F.Supp.2d 205. **Removal** Of Cases 17

Defendant's election to proceed in state court by obtaining agreed continuance of state court trial without stating its intention to trigger **removal** during the interim, which was a breach of prompt notification requirement, constituted assent to jurisdiction of state court and precluded defendant from seeking **removal** of case to **federal court**. Chicago Title & Trust Co. v. Whitney Stores, Inc., N.D.Ill.1984, 583 F.Supp. 575. **Removal** Of Cases 17

Where initial lawsuit against defendant was filed in 1971 and defendant filed no **removal** petition against it, where plaintiffs filed a similar claim in 1980, after plaintiffs' first try to amend 1971 complaint failed, in which defendant petitioned for **removal** to **federal court**, and where it was clear that the two causes of action would have been consolidated in state court, defendant, having elected to proceed in state court with the 1971 case, waived its right to **remove** the 1980 case, despite the fact that both causes of action were federally cognizable and **removable**. Blue Ox Corp. v. Murphy Oil Corp., D.C.Mont.1981, 524 F.Supp. 1019. **Removal** Of Cases 17

---- Revival of removal right, waiver

Addition of wrongful death claim to negligence action was not significant enough to revive right to **remove** case to **federal court** after right to **remove** had already been waived by defendant by failing to file **removal** petition within 30-day time period; change

in amount of damages sought did not give rise to new **removal** right since original and first amended complaints in personal injury action sought multimillion dollar recovery, and only fact of death was new element introduced by second amendment. McKenna v. Brassard, D.Mass.1989, 704 F.Supp. 309. **Removal** Of Cases 79(7)

---- Effect on subsequent state court actions, waiver

Failure of defendants in state action to seek **removal** did not affect their right to have subsequently filed actions **removed**. Weiner v. Sorenson, E.D.Wis.1972, 341 F.Supp. 397. **Removal** Of Cases 17

Stay

The District Court did not abuse its discretion in staying **federal court** actions by a managing partner against another partner for breach of fiduciary and dissolution of the partnership, and against a bank for allegedly aiding the other partner in the fraudulent transfer of assets, pending resolution of the managing partner's action in state court against the other partner, where staying the **federal court** actions conserved judicial resources and avoided the potential for inconsistent results, and the managing partner's commencement of an action in **federal court** arising from the same dispute already in litigation before a state court was a sign of vexatious federal litigation. Freed v. J.P. Morgan Chase Bank, N.A., C.A.7 (Ill.) 2014, 756 F.3d 1013, rehearing and rehearing en banc denied. **Federal Courts** 2697

Remand--Generally

Railroad company failed to meet heavy burden of showing that there was no possibility that former railroad employee could prevail in his action against company under Federal Employers Liability Act (FELA), and thus employee was entitled to remand of his FELA claim to state court, although company had potentially strong defenses against employee's claim based on argument that employee was commuting from work at time of incident; there was authority for the proposition that employee could be covered under certain circumstances even if he was deemed to be going to or from work. Roddy v. National Railroad Passenger Corporation (Amtrak), E.D.Pa.2017, 282 F.Supp.3d 893. **Removal** of Cases 102

Absent a proper basis for subject matter jurisdiction, a **removed** case must be remanded to state court. Keith v. Clarke American Checks, Inc., W.D.N.C.2003, 261 F.Supp.2d 419. **Removal** Of Cases 102

Statute authorizing remand of all matters in which state law predominates does not authorize remand of federal claims brought with those state law claims. Hickerson v. City of New York, S.D.N.Y.1996, 932 F.Supp. 550. **Removal** Of Cases 101.1

In tenants' suit for injuries caused by presence of lead paint at their property, federal district court did not have authority to remand to state court federal claims that had been **removed** to **federal court** by defendants. Hunter by Conyer v. Estate of Baecher, E.D.Va.1995, 905 F.Supp. 341. **Removal** Of Cases 100

Remand of **removed** case is favored where federal jurisdiction is not absolutely clear. Lambert v. Mail Handlers Benefit Plan, M.D.Ala.1995, 886 F.Supp. 830, appeal after remand from **federal court** 682 So.2d 61. **Removal** Of Cases 102

An action which has been **removed** from state court to **federal court** under this section may be remanded without corrective appellate review only for improvident **removal** or lack of jurisdiction. Griffin v. Hooper-Holmes Bureau, Inc., M.D.Fla.1976, 413 F.Supp. 107. **Removal** Of Cases 101.1; **Removal** Of Cases 102

---- Sua sponte determination, remand

Where **removal** petition showed that original parties were not diverse and that nondiverse defendants were eliminated by summary judgment, federal jurisdiction was lacking, and United States District Court to which action was **removed** came under immediate and continuing duty to remand case on its own motion, and plaintiff was not required to take any action, such as motion for remand. Strasser v. KLM Royal Dutch Airlines, C.D.Cal.1986, 631 F.Supp. 1254. **Removal** Of Cases 100

If a **federal court**, on **removal**, determines that he does not have jurisdiction it is obligated, on its own motion if necessary, to remand. Strange v. Arkansas-Oklahoma Gas Corp., W.D.Ark.1981, 534 F.Supp. 138. **Removal** Of Cases 100

District court should sua sponte remand case to state court if its jurisdiction is not proper. Pettit v. Arkansas Louisiana Gas Co., E.D.Okla.1974, 377 F.Supp. 108. **Removal** Of Cases 107(.5)

---- Considerations governing, remand

Considerations of finality, efficiency, and economy outweighed improper **removal** pursuant to Class Action Fairness Act (CAFA), which was subsequently cured by voluntary addition of federal Truth in Lending Act (TILA) claim, such that dismissal and remand to state court would be inconsistent with fair and unprotracted administration of justice, in car buyer's putative class action originally filed in state court, alleging claims for breach of contract, and other state-law claims, arising from alleged failure to equip car with certain vehicle add-ons; District Court resolved state-law claims on the merits, and wiping out the adjudication postjudgment and returning the case to state court would impose exorbitant cost on dual court system. Singh v. American Honda Finance Corporation, C.A.9 (Wash.) 2019, 925 F.3d 1053. **Removal** of Cases 118

If defendant can show that amount in controversy exceeds jurisdictional amount, plaintiff, to prevent remand of **removed** case, must be able to show that, as a matter of law, it is certain that he will not be able to recover more than the damages for which he has prayed in state court complaint; the initial showing by defendant is to be a preponderance of the evidence, with plaintiff's claim otherwise remaining presumptively correct, and the preponderance burden forces defendant to do more than point to a state law that might allow plaintiff to recover more than what it pled and requires evidence which establishes that the actual amount in controversy exceeds the jurisdictional amount. De Aguilar v. Boeing Co., C.A.5 (Tex.) 1995, 47 F.3d 1404, certiorari denied 116 S.Ct. 180, 516 U.S. 865, 133 L.Ed.2d 119. **Removal** Of Cases 107(7)

District court was not confined to Virginia's pleading standards but rather was required to take hard look at record to determine whether skateboarder had any reasonable possibility of establishing vicarious-liability claim under Virginia law against non-diverse employer of motorist, whose vehicle allegedly struck skateboarder, when deciding whether there was no possibility of skateboarder prevailing on claim in state court, as would preclude remand of action against motorist and employer to state court under fraudulent joinder doctrine. Garver v. Holbrook, E.D.Va.2021, 2021 WL 2689841. **Removal** of Cases 107(7)

Snow and ice **removal** subcontractor, contractor, contractor's insurer, individual who slipped and fell in retailer's parking lot, and his wife, were all properly joined as defendants to retailer's state court action, seeking, inter alia, declaration under the Pennsylvania Declaratory Judgments Act of subcontractor's insurer's duty to defend and indemnify retailer as an additional insured under general liability policy provided to subcontractor, with regard to underlying slip and fall action against retailer, and thus, remand to state court was warranted; such parties were joined because the claims raised against them were factually and legally related to the dispute between retailer and insurer, and because their interests in recovery could be affected by the outcome of action. Target Corporation v. Frederick Mutual Insurance Company, E.D.Pa.2018, 302 F.Supp.3d 695. **Removal** of Cases 102

Facts underlying plaintiff's Racketeer Influenced and Corrupt Organizations Act (RICO) claims were so inextricably tied up with the facts giving rise to her state-law claims as to preclude remand of state law claims; complaint incorporated state-law allegations by reference in two RICO counts, and counts were all part of the same case or controversy. Doe v. Norwich Roman Catholic Corp., D.Conn.2009, 606 F.Supp.2d 244. **Federal Courts** 2544; **Removal** Of Cases 102

Removed suits against holder of patent on cancer drug tamoxifen, and licensee, claiming violations of state antitrust and consumer protection laws, would not be remanded, as court had federal question jurisdiction; validity of questioned actions depended upon determination of federal question whether patent was valid and enforceable. In re Tamoxifen Citrate Antitrust Litigation, E.D.N.Y.2002, 222 F.Supp.2d 326. **Removal** Of Cases 19(6)

In considering motion to remand, court's focus is limited to its authority to hear case pursuant to **removal** statute. Casey v. Hinckley & Schmitt, Inc., N.D.Ill.1993, 815 F.Supp. 266. **Removal** Of Cases 107(4)

Failure to comply with statutes regulating **removal** generally constitutes an adequate ground for remand to state court. Mason v. International Business Machines, Inc., M.D.N.C.1982, 543 F.Supp. 444. **Removal** Of Cases 103

To obtain **removal** of a case from state to **federal court** the defendant files a petition for **removal** setting forth the basis therefor, and case must be remanded if at any time it appears that the case was **removed** improvidently and without jurisdiction. Mabray v. Velsicol Chemical Corp., W.D.Tenn.1979, 480 F.Supp. 1240. **Removal** Of Cases 86(1); **Removal** Of Cases 102

---- Crowded court calendar, remand

A heavy caseload and a laborious delay in litigation in **federal court** does not justify remand of case back to state court where it was commenced. Griffin v. Hooper-Holmes Bureau, Inc., M.D.Fla.1976, 413 F.Supp. 107. **Removal** Of Cases 101.1

The heavy docket of cases in federal district court is not a proper ground for remand to state court, but if **federal court** lacks jurisdiction over cause which was **removed**, it must sua sponte remand to a state court. Glaziers, Glass Workers (Local Union No. 1928) of Jacksonville, Fla. v. Florida Glass and Mirror of Jacksonville, Inc., M.D.Fla.1976, 409 F.Supp. 225. **Removal** Of Cases 100; **Removal** Of Cases 101.1

---- Discretion of court, remand

Although district court acquires jurisdiction over whole case by virtue of its jurisdiction over third-party claim, it has discretion to remand all matters in which state law predominates. Lazo v. Inland Sales Co., N.D.Tex.1995, 925 F.Supp. 463. **Removal** Of Cases 101.1

District court has discretion to remand pendent state-law claims following dismissal of federal claims in **removed** civil action after weighing interests in exercising jurisdiction, economy, convenience, fairness, and comity. Hood v. City of Boston, D.Mass.1995, 891 F.Supp. 51. **Removal** Of Cases 101.1

---- Unanimity rule, remand

Following charge card issuer's **removal** of case from state court, district court had supplemental jurisdiction over cardholders' state-law claims against merchants for breach of contract and fraud and state-law claims against issuer for breach of contract and violation of New York statute prohibiting deceptive acts and practices, and thus unanimity rule's exception whereby defendant seeking **removal** need not seek consent to **remove** from other defendants where action consisted of claim supported by original jurisdiction and state-law claim not supported by supplemental jurisdiction did not apply, requiring court to remand case; federal and state claims arose out of same common nucleus of operative fact, which was series of underlying sales transactions. Nguyen v. American Express Company, S.D.N.Y.2017, 282 F.Supp.3d 677. **Removal** Of Cases 82

---- Doubts resolved in favor of remand

If there are any doubts about the propriety of **removal** of a case to **federal court**, all doubts should be resolved in favor of remand. Colon-Rodriguez v. Astra/Zeneca Pharmaceuticals, LP, D.Puerto Rico 2011, 831 F.Supp.2d 545. **Removal** of Cases 107(7)

Because jurisdiction is fundamental, any doubts concerning **removal** must be resolved against **removal** and in favor of remanding case to state court. Cross v. Bankers Multiple Line Ins. Co., N.D.Tex.1992, 810 F.Supp. 748. **Removal** Of Cases 107(7)

Doubts concerning **removability** are to be resolved against **removal** and in favor of remand. McCaslin v. Blue Cross and Blue Shield of Alabama, N.D.Ala.1991, 779 F.Supp. 1312. **Removal** Of Cases 107(7)

Where federal jurisdiction is uncertain, it is only prudent to resolve all doubts in favor of remand to state court with unquestionable jurisdiction. Collins v. American Red Cross, E.D.Pa.1989, 724 F.Supp. 353. **Removal** Of Cases 107(7)

Where **removal** is doubtful case should be remanded. Eure v. NVF Co., E.D.N.C.1979, 481 F.Supp. 639. **Removal** Of Cases 107(5)

If right to **remove** is doubtful, case should be remanded. Wilhelm v. U.S. Dept. of Air Force Accounting and Finance Center, S.D.Tex.1976, 418 F.Supp. 162. **Removal** Of Cases 107(4)

If the right to **remove** is doubtful, the case should be remanded. Lowe v. Trans World Airlines, Inc., S.D.N.Y.1975, 396 F.Supp. 9. **Removal** Of Cases 101.1

Federal district court should remand close or doubtful **removed** cases. Glenmede Trust Co. v. Dow Chemical Co., E.D.Pa.1974, 384 F.Supp. 423. **Removal** Of Cases 107(4)

Any doubts as to **removability** of action to **federal court** must be resolved in favor of remand. Mountain Nav. Co., Inc. v. Seafarer's Intern. Union of North America, W.D.Wis.1971, 348 F.Supp. 1298. **Removal** Of Cases 107(7)

Where there is any substantial doubt concerning jurisdiction of **federal court** on **removal**, case should be remanded and jurisdiction should be retained only where it is clear. Morrison v. Jack Richards Aircraft Co., W.D.Okla.1971, 328 F.Supp. 580. **Removal** Of Cases 107(4)

Where right to **remove** is doubtful, case should be remanded to state court. Barnett v. Faber, Coe & Gregg, Inc., S.D.N.Y.1968, 291 F.Supp. 178. See, also, Murphey v. G. C. Murphy Co., D.C.La.1963, 216 F.Supp. 124. **Removal** Of Cases 107(4)

It is policy of **federal courts** to restrict their jurisdiction, and doubtful **removal** cases should be remanded to state courts. Moosbrugger v. McGraw-Edison Co., D.C.Minn.1963, 215 F.Supp. 486. **Removal** Of Cases 107(4)

Where want of federal jurisdiction would make futile the litigation of any issues in this court, every doubt should be resolved in favor of remand. Rodriguez v. Union Oil Co. of Cal., S.D.Cal.1954, 121 F.Supp. 824. **Removal** Of Cases 107(7)

---- Improper removal, remand

District's court's error in proceeding to the merits of **removed** state-court action for breach of contract brought by limited liability company (LLC) against biopharmaceutical corporation, without first determining whether it had subject-matter jurisdiction, required remand to the district court so that district court could exercise its discretion to conduct further proceedings; none of the underlying state-court pleadings, the notice of **removal**, or the record as a whole reflected that the parties were completely

diverse. Platinum-Montaur Life Sciences, LLC v. Navidea Biopharmaceuticals, Inc., C.A.2 (N.Y.) 2019, 943 F.3d 613. **Removal** of Cases 107(9)

Title insurers' **removal** of bank's action before any defendant had been served, a practice known as "snap **removal**," was premature, and thus remand was warranted pursuant to **removal** statute; **removal** statute's purpose was better fostered by precluding **removal** until at least one defendant was served, and Congress would not have intended to create a means for defendants to leapfrog over **removal** statute's forum-defendant rule, which prohibited **removal** if any parties properly joined and served as defendants were citizen of state in which such action was brought. Bank of America, N.A. v. Fidelity National Title Group, Inc., D.Nev.2022, 2022 WL 2914847. **Removal** of Cases 45; **Removal** of Cases 103

Plaintiffs were entitled to remand of state action back to New Mexico state court following **removal** by company defendant; company defendant failed to show that plaintiffs fraudulently joined individual defendant because he was entitled to qualified immunity under the New Mexico Tort Claims Act (NMTCA), and company defendant's new grounds for **removal**, offered in its response and motion to amend its **removal** notice, were not appropriate since they were offered for the first time in opposition to plaintiffs' motion for remand. Lopez v. Walker Stainless Equipment Company, LLC, D.N.M.2020, 2020 WL 42844. **Removal** of Cases 102; **Removal** of Cases 107(6)

Question of whether seller of nutritional supplements through online retailer infringed upon trademarks of wholly owned subsidiary of developer of supplements, or unfairly competed with subsidiary, did not present a substantial, significant, determinative question of federal law that would confer federal-question jurisdiction, and thus remand to state court following **removal** to **federal court** by subsidiary was warranted; complaint only stated state-law claims, government likely did not have a strong interest in litigating in a federal forum as issue did not implicate federal government's conduct or policies and did not call into question validity of federal laws, but rather only implicated the legal rights of parties to litigation, and state courts were perfectly equipped to decide matter. Get Fit Fast Supplements, LLC v. Richpianauncensored.com, LLC, S.D.Fla.2019, 393 F.Supp.3d 1136. **Removal** of Cases 102

Injunction would issue, enjoining former property owner from filing further notices of **removal** of state court forcible detainer action, absent new or valid grounds, where former owner had twice **removed** action, the second notice of **removal** was virtually identical to unsuccessful first notice of **removal**, former owner had failed to respond to second motion to remand, and injunction was necessary to prevent future frivolous attempts at **removal**. U.S. Bank National Association v. Jefferson, S.D.Tex.2018, 314 F.Supp.3d 768. Injunction 1170

Defendant's failure to **remove** state court action to correct federal district required remand to state court, even if defendant would not be able to **remove** case to correct **federal court** following remand, where any such harm was attributable to defendant's failure to follow **removal** statute's clear instructions, and it remained free to fully litigate its case in state court. Butler v. North Carolina Department of Transportation, M.D.N.C.2016, 154 F.Supp.3d 252. **Federal Courts** 2901; **Removal** Of Cases 14

---- Jurisdiction, remand

Statute, allowing for appellate review of orders remanding a case to the state court from which it was **removed** pursuant to federal officer **removal** statute or civil rights **removal** statute, permitted Court of Appeals to review entire remand order, not just part of order deciding the federal officer **removal** ground, in action brought by mayor and city council against energy companies for promoting fossil fuels while allegedly concealing their environmental impacts; although case was **removed** pursuant to multiple federal statutes, statute did not limit appellate review solely to issues under the federal officer and civil rights **removal** statutes, and Congress knew how to limit appellate review to particular questions, rather than whole orders. BP P.L.C. v. Mayor and City Council of Baltimore, U.S.2021, 141 S.Ct. 1532, 209 L.Ed.2d 631, on remand 31 F.4th 178. **Removal** of Cases 107(9)

Considerations of finality, efficiency, and economy were not overwhelming and thus they did not excuse the lack of federal question jurisdiction at time of **removal** by energy companies, as would support an exception to general rule that a case that was not fit for federal adjudication when it was **removed** must be remanded to state court, in cities' actions asserting energy companies' liability under California law for a public nuisance, based on allegations that companies' production and promotion of fossil fuels caused or contributed to global warming that induced a sea-level rise; entry of judgment was based on the grant of companies' motion to dismiss for failure to state a claim, case had been on district court's docket for only eight months, and no discovery had been conducted. City of Oakland v. BP PLC, C.A.9 (Cal.) 2020, 960 F.3d 570. **Removal** of Cases 102

Mere presence of federal issue in state cause of action does not automatically confer federal question jurisdiction. Diaz v. Sheppard, C.A.11 (Fla.) 1996, 85 F.3d 1502, rehearing denied, rehearing and suggestion for rehearing en banc denied 99 F.3d 1157, certiorari denied 117 S.Ct. 1349, 520 U.S. 1162, 137 L.Ed.2d 506. **Federal Courts** 2211

District court was required to remand case to state court after insured voluntarily dismissed foreign state insurer who had **removed** case, which left only domestic insurers for whom no independent jurisdictional basis existed, even assuming that **removal** jurisdiction provision of Foreign Sovereign Immunities Act (FSIA) authorized pendent party jurisdiction over claims against additional parties while foreign state remained party in case; foreign insurer was dismissed before district court had even ruled on its entitlement to sovereign immunity. Schlumberger Industries, Inc. v. National Sur. Corp., C.A.4 (S.C.) 1994, 36 F.3d 1274. **Removal** Of Cases 102

Dismissal of all but one of borrower's claims against lender's assignee and loan servicer, a claim for violation of California's Rosenthal Fair Debt Collection Practices Act (RFDCPA), bringing amount in controversy below $75,000 threshold for diversity jurisdiction, did not dissolve district court's original jurisdiction as would warrant remand to state court following **removal**; borrower's RFDCPA claim was part of bundle of claims that put more than the jurisdictional amount at issue. Barefield v. HSBC Holdings PLC, E.D.Cal.2018, 356 F.Supp.3d 977. **Removal** of Cases 102

District court would decline to apply fraudulent misjoinder doctrine, and thus would remand, for lack of subject matter jurisdiction, plaintiff's **removed** wrongful death action against doctor and drug manufacturer arising out of patient's death from overdose of prescription pain medication; court rejected fraudulent misjoinder doctrine as contrary to maxim that federal jurisdiction is to be construed narrowly, because doctrine created an unpredictable and complex rule, and because better approach was for defendants to seek severance in state court before attempting to **remove** to **federal court**. Hampton v. Insys Therapeutics, Inc., D.Nev.2018, 319 F.Supp.3d 1204. **Removal** of Cases 102

A district court must reject federal jurisdiction if there is any doubt as to the right of **removal** in the first instance. Provenza ex rel. Provenza v. Yamaha Motor Co., Ltd., D.Nev.2003, 295 F.Supp.2d 1175. **Removal** Of Cases 107(7)

When district court lacked jurisdiction over inmate's claim against state by virtue of Eleventh Amendment, it was necessary to remand entire **removed** action to state court; matter could not have been **removed** when court lacked jurisdiction over any portion of complaint, it was immaterial that court would have had authority to remand parts of action to state court for efficiency reasons if it so chose, and there was no special federal concern mandating district court's retention of remaining claims. Robinson v. State of Cal., N.D.Cal.1993, 836 F.Supp. 717. **Removal** Of Cases 102

Complaint for emotional distress would be remanded to state court where Doe defendants were not included solely to defeat diversity and where plaintiff intended to identify Doe defendants and proceed against them. Goodman v. Travelers Ins. Co., N.D.Cal.1983, 561 F.Supp. 1111. **Removal** Of Cases 102

Plaintiff employer's allegations that defendant unions were responsible for certain acts of violence which interfered with plaintiff's employees' right to work and the performance of its contracts failed to state a claim which was within the original jurisdiction of the district court, thus necessitating remand of the **removed** case back to the state court in which the suit was brought. Norton Coal Co. v. UMW of America, Dist. 28, UMWA, W.D.Va.1974, 387 F.Supp. 50. **Removal** Of Cases 25(1)

Statute permitting remand of action to state court where separate claim over which federal question exists, and which has been **removed** to **federal court**, is joined with one or more otherwise nonremovable claims did not provide basis for remand to state court of action by estate of truck driver who had been killed in explosion of gasoline tanker truck against manufacturers, which had been **removed** to **federal court** on basis of diversity; statute applies only to federal question cases. Marshall v. Navistar Intern. Transp. Corp., E.D.Mich.1996, 168 F.R.D. 606. **Removal** Of Cases 101.1

Where libel action by California attorney against magazine publisher and distributors was **removed** to **federal court** on basis of diversity jurisdiction, remand was required if any proper defendant was a California resident. Lewis v. Time Inc., E.D.Cal.1979, 83 F.R.D. 455, affirmed 710 F.2d 549. **Removal** Of Cases 29

---- Loss of jurisdiction, remand

Medical services provider's state-law claims against health insurance company, arising from insurance company's termination of in-network agreement with provider, did not derive from the same nucleus of fact as provider's federal securities law claims against separate defendants, arising from provider's purchase of securities from those defendants, and thus district court could not exercise supplemental jurisdiction over provider's state-law claims and immediate remand of those claims to state court was required; although provider vaguely asserted that insurance company and the other defendants previously had a "lengthy and sordid relationship," the complaint demonstrated no connection between the controversies. S J Associated Pathologists, P.L.L.C. v. Cigna Healthcare of Texas, Incorporated, C.A.5 (Tex.) 2020, 964 F.3d 369. **Federal Courts** 2545; **Removal** of Cases 102

Rule of *I.N.S. v. St. Cyr*, that curtailment of discretionary waiver of **removal** found in Antiterrorism and Effective Death Penalty Act (AEDPA) and subsequent elimination of such relief found in Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) did not apply retroactively to aliens who were in deportation proceedings after AEDPA and IIRIRA became effective, was rule interpreting statute, rather than announcement of new rule of law, and thus could be applied retroactively to alien who did not have appeal pending at time *St. Cyr* was decided. Nolasco v. U.S., S.D.N.Y.2004, 358 F.Supp.2d 224. Aliens, Immigration, And Citizenship 216

Suit which, at time it was filed in state court, named as defendants diverse employer and fictitious employee and which was **removed** by employer based on diversity between itself and plaintiff could be remanded to state court after plaintiff discovered name of employee and determined that his presence destroyed diversity; although employer contended that citizenship of defendant sued under fictitious name was to be disregarded for purposes of **removal**, plaintiff simply did not know name of employee at time he initiated suit, and, since there was only one employee involved in plaintiff's action, his citizenship was established at commencement of action even though his actual name was unknown. Tompkins v. Lowe's Home Center, Inc., E.D.La.1994, 847 F.Supp. 462. **Removal** Of Cases 43; **Removal** Of Cases 102

If any indispensable and necessary party is served with process and brought into case after an action has been **removed** to federal district court and if presence of that party destroys jurisdiction of court, then action must be remanded to state court. South Panola Consol. School Dist. v. O'Bryan, N.D.Miss.1977, 434 F.Supp. 750. **Removal** Of Cases 102

---- Successive actions in state court, remand

Attachment case **removed** from state to **federal court** would not be remanded merely because a second state court attachment action, commenced more than three months after **removal**, involved same automobile accident. Ladson v. Kibble, S.D.N.Y.1969, 307 F.Supp. 11. **Removal** Of Cases 101.1

---- Civil rights actions, remand

Although Court of Appeals would ordinarily not consider request to remand case to state court, on appeal of final decision of federal district court, remand to state court would be considered in employment discrimination case; district court had taken no action, other than dismissal of defendant which was subject to revision, and there was consequently no final ruling precluding remand to state court. Marshall v. Manville Sales Corp., C.A.4 (W.Va.) 1993, 6 F.3d 229. **Removal** Of Cases 107(9)

School officials did not comply with unanimity requirement for **removal**, warranting remand, in action by student's mother, on behalf of herself and student, against school officials and others alleging that defendants deliberately discriminated against student on basis of race and disability by denying him access to public school system, where school officials chose to file notice of **removal** three days after receiving complaint, all defendants were served within 30 days of one another, thereby giving school officials time to procure consent of co-defendants before their **removal** window expired, and right of co-defendant, who was served on same day as notice was filed, to object to **removal** was not vitiated merely because there was no proof of service on docket when notice was filed. Doe v. McGuire, D.Mass.2018, 289 F.Supp.3d 266. **Removal** of Cases 103

Remand of defendant's § 1983 counterclaim and cross-claim was warranted, since federal district court previously remanded supplemental state claims and those state claims predominated over federal § 1983 counterclaim and cross-claim. Redevelopment Agency of City of San Bernardino v. Alvarez, C.D.Cal.2003, 288 F.Supp.2d 1112. **Federal Courts** 2563; **Federal Courts** 2564; **Removal** Of Cases 101.1

After state forfeiture action and third-party civil rights complaint against city and city police officer were **removed** to **federal court**, forfeiture action would be remanded; forfeiture action could not have been filed in **federal court**, and civil rights complaint was distinct and independent claim against third parties that could have been filed regardless of whether state had filed its state forfeiture action. State v. $35,180.00, S.D.Tex.1996, 951 F.Supp. 113. **Removal** Of Cases 107(8)

Federal district court has discretion to remand entire case, including § 1983 claim, when state law claims predominate, even if **removal** was sought both under statute providing original **federal court** jurisdiction for actions arising under federal laws and Constitution, and under statute providing such jurisdiction for actions to redress deprivation of federal constitutional and statutory rights and for actions to recover damages under civil rights laws. Burnett v. Birmingham Bd. of Educ., N.D.Ala.1994, 861 F.Supp. 1036. **Removal** Of Cases 101.1

Remand was required as to entire § 1983 action and could not be limited to claims barred from **federal court** by Eleventh Amendment; it would be misuse of judicial resources if state court tried case against defendants acting in official capacities and **federal court** tried case against defendants in individual capacities. Cotton v. State of S.D. By and Through South Dakota Dept. of Social Services, D.S.D.1994, 843 F.Supp. 564. **Removal** Of Cases 101.1

Action brought by teachers alleging violations of state and federal law as result of school board's action in transferring teachers pursuant to consent decree entered in desegregation action was **removable**, and therefore, plaintiffs' motion to remand case to state court would be denied. Murphy v. Board of Ed. of City of St. Louis, E.D.Mo.1978, 455 F.Supp. 390, affirmed 594 F.2d 869, certiorari denied 99 S.Ct. 2407, 441 U.S. 962, 60 L.Ed.2d 1066. **Removal** Of Cases 25(1); **Removal** Of Cases 107(4)

---- Environmental actions, remand

Remand of environmental suits that were improvidently **removed** by defendants in that they did not "arise under" any federal statute was warranted, even though there was strong probability that United States, as third-party defendant, would subsequently **remove** suits to **federal court**; though remand order would cause substantial waste of legal and judicial time and resources, **removal** statute required it. Boone v. DuBose, M.D.La.1988, 718 F.Supp. 479. **Removal** Of Cases 102

---- Forum defendants, remand

Lender that provided financing for buyer's purchase of car, which was not citizen of state of Washington, was not "primary defendant," but car dealership, a citizen of Washington state, was "primary defendant," so that home state exception to Class Action Fairness Act (CAFA) applied and **removal** under CAFA was improper, in car buyer's putative class action originally filed in Washington state court, alleging claims for breach of contract, and other state-law claims, arising from alleged failure to equip car with certain vehicle add-ons; defendants were collectively described in complaint as auto dealers doing business in Washington, and complaint asserted that defendants unlawfully charged customers for vehicle add-ons that they did not include and which could not be declined, and that lender profited from misconduct of dealership, so that lender's liability depended on threshold finding that dealership acted unlawfully. Singh v. American Honda Finance Corporation, C.A.9 (Wash.) 2019, 925 F.3d 1053. **Removal** of Cases 2; **Removal** of Cases 102

Pharmaceutical company, a citizen of Pennsylvania, established by a preponderance of the evidence that **removal** from Pennsylvania state court on basis of diversity of citizenship was effectuated before service on company in patient's action for damages resulting from the insertion and later **removal** of an allegedly defective intrauterine device, precluding remand to state court on basis that company was a citizen of state in which action was originally brought; evidence showed that time of service of process entered by employee who accepted service on behalf of company, which was after **removal** was effectuated, was accurate and that time recorded in process server's affidavit of service, which showed complaint was served prior to when **removal** was effectuated, was a mistake. Weddle v. Teva Pharmaceuticals USA, Inc., E.D.Pa.2020, 438 F.Supp.3d 337. **Removal** of Cases 107(7)

Hernia mesh implant manufacturer failed to properly effectuate **removal**, based on diversity, of implant patient's New Jersey state court products liability action before being served in that action, and thus forum defendant rule barred **removal**, where manufacturer did not file copy of **removal** notice in state court until after service. Dutton v. Ethicon, Inc., D.N.J.2019, 423 F.Supp.3d 81. **Removal** of Cases 84

Forum defendant rule did not preclude **removal** of action alleging California state claims for products liability arising from ruptured silicone breast implants, even though lone defendant which was California citizen was not properly served at time of **removal**, where nothing prevented plaintiffs from serving defendants between time they filed complaint and defendants filed notice of **removal**. Jacob v. Mentor Worldwide, LLC, C.D.Cal.2019, 393 F.Supp.3d 912, reconsideration denied 2019 WL 5616958, affirmed 847 Fed.Appx. 373, 2021 WL 406304, certiorari denied 142 S.Ct. 514, 211 L.Ed.2d 313. **Removal** of Cases 79(1)

Citizenship of parish that owned park at which obstacle course race event was held could not be ignored when determining whether **removal** of race participants' action against race operator, insurers, and parish, seeking damages for personal injuries sustained when wooden obstacle over which participants were climbing collapsed, was warranted; while parish had not been served at the time of **removal**, consideration of whether joinder of parish was warranted was required when determining whether action would be remanded. Allen v. Red Frog Events, LLC, M.D.La.2018, 335 F.Supp.3d 831. **Removal** of Cases 29

Forum defendant rule, which confined **removal** on basis of diversity jurisdiction to instances where no defendant was citizen of forum state, was applicable, and thus remand was appropriate, in "Pebble Beach" trademark licensee's action against alleged infringer for unfair competition, false advertising, intentional interference with contractual relations, conversion, and trespass to chattels under California law; at the time of **removal**, alleged infringer was citizen of California and forum defendant, as forum defendant, alleged infringer could not **remove** solely on basis of diversity jurisdiction, sole basis of alleged infringer's **removal** was diversity jurisdiction, and licensee filed timely motion to remand. SWC Inc. v. Elite Promo Inc., N.D.Cal.2017, 234 F.Supp.3d 1018. **Removal** of Cases 45; **Removal** of Cases 102

Automobile liability insurer's **removal** based on diversity jurisdiction was not barred by forum defendant rule, in action brought by insured wife, individually and as surviving spouse and next of friend of her husband, against insurer and driver of motor

vehicle that was involved in accident that resulted in death of her husband, even if driver was resident of state in which action was brought, since at time of **removal**, wife had not yet served driver, as required by inclusion of phrase "properly joined and served" in forum defendant rule, and application of rule did not produce absurd result, in that wife had month to serve driver after she filed action and before insurer **removed**. Magallan v. Zurich American Insurance Company, N.D.Okla.2017, 228 F.Supp.3d 1257. Statutes 1091; Statutes 1405

Under forum defendant rule, which provided that diversity cases could not be **removed** from state court if any of the parties, properly joined and served as defendants in the action, were citizens of the state in which the plaintiff filed the lawsuit, remand of employee's breach of contract action against his former employer was required, given that suit was filed in District of Columbia, it was **removed** on the basis of diversity jurisdiction, and former employer was a citizen of the forum state, the District of Columbia. Klayman v. Judicial Watch, Inc., D.D.C.2016, 185 F.Supp.3d 67. **Removal** of Cases 45; **Removal** of Cases 103

District court did not have jurisdiction over action brought by former employee against former employer, a coworker, and a supervisor for sexual harassment and retaliation, pursuant to statute preventing **removal** to **federal court** on basis of diversity jurisdiction if any defendants were citizens of forum state, despite fact that individual defendants had not yet been served, where employer **removed** case to **federal court** on basis of diversity jurisdiction, and individual defendants were citizens of the forum state. Rizzi v. 178 Lowell Street Operating Company, LLC, D.Mass.2016, 180 F.Supp.3d 66. **Removal** Of Cases 11

Forum-defendant rule barred **removal** of medical malpractice action, filed in a Maryland state court, against an individual, a hospital, and a university, even though none of them had been served at time the notice of **removal** was filed; there was no danger of opportunistic joinder, since each defendant was a citizen of Maryland, and application of the "properly joined and served" exception to the forum-defendant rule would serve neither the general purpose of diversity jurisdiction nor the specific purpose of that exception. Reimold v. Gokaslan, D.Md.2015, 110 F.Supp.3d 641. **Removal** of Cases 45

Remand to North Dakota state court was warranted and appropriate in quiet title action; there was no diversity of jurisdiction or indication that all defendants consented or acquiesced to **removal**, and several defendants were citizens of North Dakota, thus triggering "forum defendant rule," providing that non-federal question case was **removable** only if none of parties was citizen of state in which action was brought, and rendering **removal** improper. Capps v. Weflen, D.N.D.2010, 690 F.Supp.2d 885. **Removal** Of Cases 45; **Removal** Of Cases 102; **Removal** Of Cases 103

---- Forum selection clauses, remand

Federal district court, to which defendant **removed** an action filed in state court, was not "in" Linn County, Oregon, for purposes of venue-selection agreements stating that venue for litigation would be in Linn County, Oregon, where no federal courthouse was located in Linn County and instead the federal courthouse was located in Lane County, even if district court had judicial authority over cases that arose in Linn County; clear import of venue-selection agreements was to ensure that any litigation arising out of the contracts would take place within geographic boundaries of Linn County, and if the case proceeded in **federal court**, litigation would instead occur in Lane County. City of Albany v. CH2M Hill, Inc., C.A.9 (Or.) 2019, 924 F.3d 1306. **Removal** of Cases 107(9)

Remand to the Commonwealth Court of Puerto Rico in the First Instance was warranted for creditor's action, alleging that debtor defaulted on construction loan, attempting to execute a personal guaranty by debtor, and asserting foreclosure of mortgages and pledges, was warranted following **removal** to **federal court**, based upon forum selection clause contained in parties' agreement, absent showing that remand would be unreasonable, unfair or in contravention of public policy. Scotiabank De Puerto Rico v. Residential Partners S.E., D.Puerto Rico 2004, 350 F.Supp.2d 334. **Removal** Of Cases 101.1

Federal court may not remand part of action properly before court on diversity jurisdiction, in order to give effect to contractual forum selection clause, while retaining jurisdiction over remainder of case not subject to forum selection clause. RK Dixon Co. v. Dealer Marketing Services, Inc., S.D.Iowa 2003, 284 F.Supp.2d 1204. **Removal** Of Cases 101.1

---- Probate actions, remand

Probate exception to **federal court** jurisdiction warranted remand of **removed** state-court probate action, in which the United States had voluntarily intervened to terminate estate's court-appointed personal representative, where relief government sought would interfere with probate proceedings. In re Estate of Masters, E.D.Okla.2005, 361 F.Supp.2d 1303. **Removal** Of Cases 3; **Removal** Of Cases 102

---- Burden of proof, remand

When the plaintiff makes a motion to remand a **removed** case on the basis of a lack of subject matter jurisdiction, the defendant bears the burden of establishing that federal subject matter jurisdiction exists. Busby v. Capital One, N.A., D.D.C.2013, 932 F.Supp.2d 114, appeal dismissed 2013 WL 3357830. **Removal** of Cases 107(7)

When a plaintiff moves to remand for lack of jurisdiction, the burden of establishing federal jurisdiction rests upon the defendant. Snook v. Deutsche Bank AG, S.D.Tex.2006, 410 F.Supp.2d 519. **Removal** Of Cases 107(7)

The burden of demonstrating **removal** jurisdiction rests with the party seeking to keep the case in **federal court**, not the party moving for remand. Howard v. Food Lion, Inc., M.D.N.C.2002, 232 F.Supp.2d 585. **Removal** Of Cases 107(7)

When confronted with motion to remand matter to state court, **removing** party has burden of establishing propriety of **removal**, and **removing** party must show that federal subject matter jurisdiction exists and that **removal** is proper. Gateway 2000, Inc. v. Cyrix Corp., D.N.J.1996, 942 F.Supp. 985. **Removal** Of Cases 107(7)

On motion to remand, **removing** party has burden to establish its right to federal forum by competent proof. Ellis v. Provident Life & Acc. Ins. Co., S.D.N.Y.1996, 929 F.Supp. 751. **Removal** Of Cases 107(7)

Burden is on party seeking to **remove** case to **federal court** to show that court has subject matter jurisdiction over case, and case should be remanded if there is doubt as to right of **removal**. Kenro, Inc. v. Fax Daily, Inc., S.D.Ind.1995, 904 F.Supp. 912, reconsideration denied 962 F.Supp. 1162. **Removal** Of Cases 107(7)

Even if plaintiff has moved to remand case back to state court, defendant still retains burden of showing existence of complete diversity between adverse parties, if diversity of citizenship is challenged. Hanna v. Fleetguard, Inc., N.D.Iowa 1995, 900 F.Supp. 1110. **Removal** Of Cases 107(7)

On motion to remand **removing** party bears burden of proof on issue of diversity. Garbutt v. Southern Clays, Inc., M.D.Ga.1994, 844 F.Supp. 1551. **Removal** Of Cases 107(7)

On motion for remand, burden of proving propriety of **removal** rests on party who **removed**. Societa Anonima Lucchese Olii E. Vini v. Catania Spagna Corp., D.C.Mass.1977, 440 F.Supp. 461. **Removal** Of Cases 107(7)

With respect to plaintiffs' motion to remand case to state court, burden was on defendant to demonstrate that, when the actions were filed, there was diversity of citizenship between the parties. Northeast Nuclear Energy Co. v. General Elec. Co., D.C.Conn.1977, 435 F.Supp. 344. **Removal** Of Cases 107(7)

---- Waiver, remand

Question of propriety of **removal** of action against union defendants from state to **federal court** was moot, as plaintiffs waived any claim to remand to state court once they pled LMRA claim for unlawful secondary boycott activities and federal question statute as basis for jurisdiction in their Second Amended Complaint (SAC). Retail Property Trust v. United Broth. of Carpenters and Joiners of America, C.A.9 (Cal.) 2014, 768 F.3d 938. **Federal Courts** 2133; **Removal** of Cases 106

The right to secure a remand of case to state court in absence of federal jurisdictional subject matter cannot be waived. Jones v. General Tire & Rubber Co., C.A.7 (Ind.) 1976, 541 F.2d 660. **Removal** Of Cases 106

Father and adopted son waived any right to remand based on procedural defects in **removal** of action brought in District of Columbia court against various defendants asserting constitutional, statutory, and common law claims arising out of child neglect proceedings commenced against father, where plaintiffs affirmatively invoked federal jurisdiction over the claims raised in District of Columbia court by filing previous complaint in federal district court which largely duplicated complaint in District of Columbia action and by filing identical case in federal district court together with motion to proceed in forma pauperis on same day that District of Columbia action was filed. Ficken v. Golden, D.D.C.2010, 696 F.Supp.2d 21. **Removal** Of Cases 106

Failure to remand

Federal district court's error in denying motion to remand that followed **removal** in violation of forum-defendant rule was not fatal to ensuing judgment in personal injury action; considerations of finality and efficiency militated against vacatur given that action and others consolidated with it had been in **federal court** for 13 years, several jury trials had been conducted, plaintiffs had failed to seek interlocutory appeal after denial of remand motion, and filing in defendant's home state some time after accident that gave rise to actions evidenced gamesmanship. In re 1994 Exxon Chemical Fire, C.A.5 (La.) 2009, 558 F.3d 378. **Removal** Of Cases 107(9)

In personal injury case improperly **removed** in violation of forum-defendant rule, procedural defect of rule violation was not automatically rendered jurisdictional by fact that plaintiff filed timely motion to remand; thus, after denial of remand motion, district court, which had jurisdiction due to existence of complete diversity, retained jurisdiction to proceed to judgment. In re 1994 Exxon Chemical Fire, C.A.5 (La.) 2009, 558 F.3d 378. **Removal** Of Cases 45; **Removal** Of Cases 94

Subsequent events destroying jurisdiction

In cases in which later event, such as change in party's citizenship or subsequent reduction of amount at issue below jurisdictional levels, destroys previously existing jurisdiction, federal district court will keep **removed** case. Wisconsin Dept. of Corrections v. Schacht, U.S.Wis.1998, 118 S.Ct. 2047, 524 U.S. 381, 141 L.Ed.2d 364, on remand 175 F.3d 497. **Removal** Of Cases 43; **Removal** Of Cases 76

Service of process

In automobile insurer's contribution action against restaurant that allegedly overserved intoxicated driver, restaurant was not precluded from **removing** action on basis of incomplete service of process by agreeing to accept service electronically, where restaurant's statements of its willingness to accept electronic service did not include language regarding its position on jurisdiction and **removal**. Encompass Insurance Company v. Stone Mansion Restaurant Incorporated, C.A.3 (Pa.) 2018, 902 F.3d 147, rehearing denied. **Removal** of Cases 45

If a **removal** petition is filed by a served defendant and another defendant is served after the case is **removed**, the latter defendant may still either accept the **removal** or exercise its right to choose the state forum by making a motion to remand. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2006, 431 F.Supp.2d 109. **Removal** Of Cases 82; **Removal** Of Cases 107(.5)

Judgments

Where **removal** is improper but a final judgment issues with jurisdiction existing at that time, the judgment may not stand if the plaintiff moved to remand and finality and economy considerations are not significant, such as in a federal-question case that is dismissed before summary judgment, even if the plaintiff amended the complaint to state a federal claim. Gentek Bldg. Products, Inc. v. Sherwin-Williams Co., C.A.6 (Ohio) 2007, 491 F.3d 320. **Removal** Of Cases 94

Judgment entered in case that was improperly **removed** could stand, where parties remaining in controversy at time summary judgment was granted were of diverse citizenship due to remand of nondiverse party, amount in controversy exceeded $10,000, and **removal** was not challenged by interlocutory appeal after denial of remand motion. Able v. Upjohn Co., Inc., C.A.4 (S.C.) 1987, 829 F.2d 1330, certiorari denied 108 S.Ct. 1229, 485 U.S. 963, 99 L.Ed.2d 429. **Removal** Of Cases 107(9)

Costs and expenses

Third party defendant which **removed** case to **federal court** on basis of ERISA preemption was ordered to pay defendants/third party plaintiffs' attorney fees and costs following remand. Waymire v. Leonard, S.D.Ohio 2010, 724 F.Supp.2d 876. **Removal** Of Cases 107(11)

Employees would be awarded attorney fees and costs incurred in opposing **removal** of their action challenging employer's pay practices, where references to FLSA in employees' reply brief constituted extremely slender reed on which to base **removal** petition, employees' complaint alleged only state law violations and expressly eschewed reliance on federal law, and parties had litigated case in state court for nearly two years. In re Wal-Mart Employee Litigation, E.D.Wis.2003, 271 F.Supp.2d 1080. **Removal** Of Cases 107(11)

Plaintiff and nondiverse defendant, who successfully sought to remand action on grounds that it was improvidently **removed** by diverse defendants, were entitled to award of costs and expenses, including attorney fees; diverse defendants sought **removal** on grounds that claims against them were separate and independent, and such is appropriate basis for **removal** only where **federal court's** jurisdiction is based on federal question rather than diversity; moreover such fact was clearly established from cursory review of pertinent statute, even though diverse defendants did not have ill motive in seeking **removal**. Bady v. Estate of Woodrow, N.D.Miss.1996, 941 F.Supp. 71. **Removal** Of Cases 107(11)

District Court has discretion to award costs to plaintiff for improper **removal**, and costs should not be awarded if **removal** is attempted in good faith. Asten v. Southwestern Bell Telephone Co., D.Kan.1996, 914 F.Supp. 430. **Removal** Of Cases 107(11)

Attorney fees

“All-risks” insurer that provided policy to “protect against property loss and damage, business interruption losses, and other risks” to insured private college, as well as non-diverse insurance broker that obtained policy for insured, had objectively reasonable basis for **removing** insured's case from Maryland state court to **federal court** based on fraudulent joinder grounds, and thus the District Court would deny insured's motion for costs and fees on remand, where despite the Court's grant of remand and defendants' misreading of case upon which they primarily relied, defendants' opposition to insured's motion for remand pointed to some jurisdictions that supported their contention that insured's action, which was against insurer as well as broker in

the alternative, was unripe and might not state a claim for negligence against broker. Goucher College v. Continental Casualty Company, D.Md.2021, 2021 WL 2155039. **Removal** of Cases 107(11)

Nonprofit organization's reference to class certification in its discovery requests did not justify award of attorney fees and costs incurred by producers of pet food products when **removing** action brought against it by nonprofit organization, alleging producers misled public by representing the products were natural and contained no artificial preservatives, in violation of District of Columbia Consumer Protection Procedures Act (DCCPPA); while organization provided incorrect information which led producers to believe federal jurisdiction existed, the misstep occurred months into action and only after organization had repeatedly and unequivocally disavowed that action was class action. Toxin Free USA v. J.M. Smucker Company, D.D.C.2020, 507 F.Supp.3d 40. **Removal** of Cases 107(11)

Property owners, against whom county had brought state-court action seeking declaratory judgment that it was entitled to easement to access water and sewer mains on property and permanent injunction requiring owners to **remove** encroachments, had objectively reasonable basis for seeking to **remove** action, and thus county was not entitled to award of attorney's fees incurred as result of **removal** action; although county argued that notice of **removal**, which purportedly lacked citations to authority indicating federal jurisdiction on facts of case, evinced lack of reasonable basis, owners interpreted allegations in complaint to seek judicial determination that they could not pursue takings claim under § 1983, and thus believed that determination would involve substantial questions of federal law. County of Moore v. Acres, M.D.N.C.2020, 447 F.Supp.3d 453, on remand 2021 WL 6882789. **Removal** of Cases 107(11)

Defendant airline had objectively reasonable basis for **removal** to **federal court**, and thus award of attorney's fees to passenger was not warranted upon order of remand under statute providing that order remanding **removed** case to state court may require payment of attorney fees, in passenger's action against airline alleging breach of contract and tort claims under Massachusetts law, arising from passenger being unable to travel back into United States with his travel documents after his flight was transferred to another airline; one ground for **removal** was that Montreal Convention created federal-question jurisdiction under complete-preemption doctrine, which was a contention not yet addressed in federal circuit but that had persuaded several **federal courts**. Irabor v. Lufthansa Airlines, D.Mass.2019, 427 F.Supp.3d 222. **Removal** of Cases 107(11)

Mother was not entitled to award of costs and attorney fees in favor of mother incurred in her successful motion to remand following improper **removal** of mother's action against manufacturer and seller of insulin pump and infusion set, alleging that her son experienced seizure and traumatic brain injury due to over-delivery of insulin caused by malfunctions of insulin pump and set, and against non-diverse landlord, alleging negligence based on breach of its assumed duty of protection by delaying review of surveillance video taken by cameras installed around apartment complex, which allegedly caused delay in treatment after son's seizure; manufacturer had objectively reasonable basis for seeking **removal**, and there was no showing that case was **removed** solely with intent to delay the proceedings. Gipe v. Medtronic, Inc., W.D.Ky.2019, 416 F.Supp.3d 687. **Removal** of Cases 102; **Removal** of Cases 115

Mortgagee had objectively reasonable basis for seeking **removal** of mortgagors' state court action against mortgagees, the purchasers of mortgagors' properties, and related defendants for claims arising from foreclosure of properties and, thus, mortgagors were not entitled to award of **removal**-related attorney fees and costs; case law supported mortgagee's positions regarding purchasers' status as bona fide purchasers, as well as the statute of limitations applicable to mortgagees' quiet title claims. Carpenter v. PNC Bank, N.A., D.Hawai'i 2019, 386 F.Supp.3d 1339. **Removal** of Cases 107(11)

Removal of former airline employee's Florida state court action against former employer was objectively unreasonable, and thus award of attorney's fees and costs to employee was warranted upon remand for improper **removal**, where employer **removed** action based on diversity jurisdiction and federal question jurisdiction, but employer was citizen of Florida and employee's sole claim was retaliation in violation of Florida Civil Rights Act (FCRA) such that action could not be **removed** based on either diversity jurisdiction or federal question jurisdiction. Bentley v. Miami Air International, Inc., S.D.Fla.2019, 377 F.Supp.3d 1337. **Removal** of Cases 107(11)

Charge card issuer had objectively reasonable basis for seeking **removal** in cardholders' state-court action against issuer and merchants, and thus cardholders were not entitled to attorney fees and costs under statute governing remand, although issuer failed to file notice of **removal** within 30-day deadline, where it was not objectively unreasonable for issuer to believe that clock for filing notice of **removal** began to run on date of formal stipulation as to acceptance of service of process by issuer's attorney rather than earlier date on which e-mail exchange regarding service of process occurred, and it was not objectively unreasonable for issuer to infer that state-law claims against merchants were not supported by supplemental jurisdiction. Nguyen v. American Express Company, S.D.N.Y.2017, 282 F.Supp.3d 677. **Removal** of Cases 107(11)

Attorney fees would not be awarded to plaintiffs successfully moving to remand case to state court based on lack of diversity jurisdiction, since defendants had objectively reasonable basis for seeking **removal**; law concerning domicile, for purposes of diversity jurisdiction, required weighing of multiple factors, none of which were outcome-determinative. Kenosha Unified School Dist. v. Stifel Nicolaus & Co. Inc., E.D.Wis.2009, 607 F.Supp.2d 967. **Removal** Of Cases 107(11)

Other expenses may be included in attorney fee award following improper **removal** if such expenses are typically billed in addition to attorney's hourly rate. Casey v. Williams Production RMT Co., D.Colo.2009, 599 F.Supp.2d 1253, as amended. **Removal** Of Cases 107(11)

Review

Court of Appeals had authority and obligation to consider de novo **federal courts**' subject-matter jurisdiction over **removed** action even though party had failed to timely object to magistrate judge's order denying remand motion, in which magistrate judge found **federal-court** jurisdiction based on complete preemption of state-law claims, and even though district court judge had found that magistrate judge's jurisdictional ruling was law of the case. Marcella v. Capital Dist. Physicians' Health Plan, Inc., C.A.2 (N.Y.) 2002, 293 F.3d 42. **Removal** Of Cases 107(9); United States Magistrate Judges 271(5)

Where **removal** of action from state court to **federal court** may have been improper, subsequent amendment of complaint to create a basis for **removal** jurisdiction does not render **removal** issue moot if amendment was ordered by district court or was otherwise involuntary. Humphrey v. Sequentia, Inc., C.A.8 (Mo.) 1995, 58 F.3d 1238. **Federal Courts** 3518

When an action is improperly **removed**, yet final judgment is entered on the merits by the district court without a motion to remand or other objection, the court of appeals' inquiry is not whether the case was properly **removed**, but whether the district court would have had original jurisdiction of the case had it been filed in that court. McKenzie v. U.S., C.A.5 (La.) 1982, 678 F.2d 571. **Removal** Of Cases 94

In determining whether cause was properly **removed** to **federal court** on motion of **removing** defendant, court of appeals takes case as stated by plaintiff and looks to substantive law of state to ascertain whether a legal claim was stated against either or both defendants and whether a separate independent claim of cause of action was alleged against nonresident defendant. Edwards v. E.I. Du Pont De Nemours & Co., C.A.5 (Ga.) 1950, 183 F.2d 165. **Removal** Of Cases 48.3

PERSONS ENTITLED TO REMOVE

Persons entitled to remove generally

Defendant's right to **remove** and plaintiff's right to choose his forum are not on equal footing; **removal** statutes are construed narrowly and, when plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand. Burns v. Windsor Ins. Co., C.A.11 (Ala.) 1994, 31 F.3d 1092. **Removal** Of Cases 2; **Removal** Of Cases 107(7)

This section confines the right of **removal** from state court to federal district court to a defendant or defendants. Conner v. Salzinger, C.A.3 (Pa.) 1972, 457 F.2d 1241. **Removal** Of Cases 44

Nightclub operator was not a defendant, as would be required for **removal** of an action, with respect to proceeding in which operator petitioned for review, by the District of Columbia Court of Appeals, of an order of the District of Columbia Alcoholic Beverage Regulation Administration (ABRA) suspending operator's liquor license. MPAC, LLC, v. District of Columbia, D.D.C.2014, 181 F.Supp.3d 81, affirmed 2014 WL 4628997, rehearing en banc denied. **Removal** of Cases 44

Only a defendant may **remove** a case under this section. Reiter Oldsmobile, Inc. v. General Motors Corp., D.C.Mass.1979, 477 F.Supp. 125. **Removal** Of Cases 44

Only defendant or defendants are entitled to **remove** action from state court to **federal court**. Kane v. Republica De Cuba, D.C.Puerto Rico 1962, 211 F.Supp. 855. **Removal** Of Cases 77

Removal is a right exclusively available to defendant. Victorias Mill. Co. v. Hugo Neu Corp., S.D.N.Y.1961, 196 F.Supp. 64. **Removal** Of Cases 16

Removal of civil actions to **federal court** may be allowed only on motion of a defendant or defendants. Hall v. Sperry Gyroscope Co. Division of Sperry Rand Corp., S.D.N.Y.1960, 183 F.Supp. 891. **Removal** Of Cases 44

Prior law, persons entitled to remove

Under the Act of 1875 and under the Local Prejudice Act of 1867 the right of **removal** was given to either party, plaintiff or defendant, but under the Act of 1789 and under the Act of 1887-1888 which was similar to the provision of former § 71 of this title, the right of **removal** was restricted to the defendant or defendants, and therefore only a defendant had a right to **remove** the cause. Hanrick v. Hanrick, U.S.Tex.1894, 14 S.Ct. 835, 153 U.S. 192, 38 L.Ed. 685. See, also, Hagerla v. Mississippi River Power Co., D.C.Iowa 1912, 202 F. 771; Coyle v. Stern, La.1912, 193 F. 582, 113 C.C.A. 450; Caples v. Texas, etc. R. Co., C.C.Tex.1895, 67 F. 9; Pitkin County Min. Co. v. Markell, C.C.Colo.1887, 33 F. 386; Darton v. Sperry, 1899, 41 A. 1052, 71 Conn. 339; Chappell v. Chappell, 1898, 39 A. 984, 86 Md. 532; Hill v. Graham, 1898, 53 P. 1060, 11 Colo.App. 536; Standard Sanitary Mfg. Co. v. Benson Hardware Co., 1932, 143 So. 570, 225 Ala. 412.

Where Act of 1789 limited right of **removal** to defendants only, but by Act of 1875 right to **remove** was extended to either party, subsequent repeal of 1875 Act and reenactment of applicable provision of Act of 1789 readopted construction which had previously been put upon the 1789 Act. Sheets v. Shamrock Oil & Gas Corp., C.C.A.5 (Tex.) 1940, 115 F.2d 880, certiorari granted 61 S.Ct. 739, 312 U.S. 675, 85 L.Ed. 1116, affirmed 61 S.Ct. 868, 313 U.S. 100, 85 L.Ed. 1214. **Removal** Of Cases 44

Under the Act of 1789, which authorized the **removal** of a suit by the "defendant," if there were more than one defendant, all were required to join in the petition. Beardsley v. Torrey, C.C.Pa.1822, 2 F.Cas. 1188, No. 1190. See, also, Vannevar v. Bryant, Mass.1874, 88 U.S. 41, 21 Wall. 41, 22 L.Ed. 476 (quaere); Merioin v. Wexel, N.Y.1874, 49 How.Prac. 115; Bryan v. Ponder, 1857, 23 Ga. 480; Ludlow's Heirs v. Kidd's Ex'rs, 1827, 3 Ohio 48, 3 Ham. 48.

Purpose, persons entitled to remove

In restricting right of **removal** to defendants, purpose of this section is to restrict right of **removal** to those who had no choice in selection of a forum. Smith v. St. Luke's Hospital, D.C.S.D.1979, 480 F.Supp. 58. **Removal** Of Cases 59

Law governing, persons entitled to remove

Which party is a defendant and entitled to **remove** is determined as a matter of federal law. In re Estate of Duane, S.D.N.Y.1991, 765 F.Supp. 1200. **Federal Courts** 3025(5)

Meaning of "defendant," as used in this section and in § 1446 of this title authorizing a "defendant" to file a petition for **removal**, is a matter of federal law. Reiter Oldsmobile, Inc. v. General Motors Corp., D.C.Mass.1979, 477 F.Supp. 125. **Federal Courts** 3025(5)

Federal, not state, law determines who is plaintiff and who is defendant in **removal** actions. Cabe v. Pennwalt Corp., W.D.N.C.1974, 372 F.Supp. 780. **Removal** Of Cases 44

In deciding **removal** questions, federal and not state law determines the role of the respective parties, who is the plaintiff and who is the defendant, since the privilege of **removal** is one of federal substance. Sears Roebuck & Co. v. Glenwal Co., S.D.N.Y.1970, 325 F.Supp. 86, affirmed 442 F.2d 1350. **Removal** Of Cases 44

Federal law determines plaintiff and defendant in **removal** cases. Coastal Air Service, Inc. v. Tarco Aviation Service, Inc., S.D.Ga.1969, 301 F.Supp. 586. **Removal** Of Cases 44

In determining designation of parties for purpose of deciding whether given party has right of **removal**, federal law, rather than any state definition, governs. Magnusson v. American Allied Ins. Co., D.C.Minn.1968, 286 F.Supp. 573. **Removal** Of Cases 44

Statutes of a state do not control privilege of **removal**, and it is the federal law which determines who is plaintiff and who is defendant for **removal** purposes. Shaver v. Arkansas-Best Freight System, Inc., W.D.Ark.1959, 171 F.Supp. 754. **Removal** Of Cases 44

Substance over form controlling, persons entitled to remove

Under functional test of party status for purposes of **removal**, courts are not required to look solely to party which initiates claim, but to which party is attempting to achieve particular result and which party is resisting other party's claims. OPNAD Fund, Inc. v. Watson, S.D.Miss.1994, 863 F.Supp. 328. **Removal** Of Cases 59

The definition of "defendant" within former § 71 of this title was required to be practical rather than technical and the court would look to the actual position of the parties rather than to their titular designation in the caption. O'Neill Bros. v. Crowley, W.D.S.C.1938, 24 F.Supp. 705. **Removal** Of Cases 44

Counterclaim defendants, persons entitled to remove

The word "defendant" in the **removal** provision of the Class Action Fairness Act (CAFA) means what the word "defendant" means elsewhere in the statutory chapter governing **removal** of cases from state courts--and that word does not include a plaintiff who becomes a defendant on a counterclaim. First Bank v. DJL Properties, LLC, C.A.7 (Ill.) 2010, 598 F.3d 915, rehearing and rehearing en banc denied, certiorari denied 131 S.Ct. 506, 562 U.S. 1003, 178 L.Ed.2d 371. **Removal** Of Cases 2

Class Action Fairness Act (CAFA) did not permit litigant who initially chose state forum to **remove** case to **federal court** after becoming a counterclaim defendant. First Bank v. DJL Properties, LLC, C.A.7 (Ill.) 2010, 598 F.3d 915, rehearing and rehearing en banc denied, certiorari denied 131 S.Ct. 506, 562 U.S. 1003, 178 L.Ed.2d 371. **Removal** Of Cases 2

Counterdefendant is not a "defendant" within meaning of general **removal** statute. F.D.I.C. v. S & I 85-1, Ltd., C.A.11 (Fla.) 1994, 22 F.3d 1070. **Removal** Of Cases 29

Creditor, as counterclaim defendant, was precluded from **removing** action against debtor, seeking to collect a debt on a personal line of credit, as it was not "defendant" with power to **remove**. Boston Finance Group, LLC v. Clemmens, W.D.Ky.2014, 71 F.Supp.3d 711. **Removal** of Cases 44; **Removal** of Cases 59

Only a defendant to an action, neither a counter-defendant nor a third-party defendant, may **remove** a case from state to **federal court**. Cohn v. Charles, D.Md.2012, 857 F.Supp.2d 544. **Removal** of Cases 44; **Removal** of Cases 59

Counterclaim and cross-claim defendants are not proper parties to **remove** an action from state to **federal court**. Andersen v. Khanna, S.D.Iowa 2011, 827 F.Supp.2d 970. **Removal** of Cases 44

General **removal** statute does not allow **removal** by a counterclaim defendant who was not an original plaintiff. Capital One Bank (USA) N.A. v. Jones, N.D.Ohio 2010, 710 F.Supp.2d 630, stay denied 710 F.Supp.2d 634. **Removal** Of Cases 44

Parties joined in state court action as additional counterclaim defendants were not "defendants" within meaning of **removal** statute, and so had no statutory authority to **remove** suit to **federal court**, even though those counterclaim defendants had not chosen to litigate their claims in state court. Capitalsource Finance, LLC v. THI of Columbus, Inc., S.D.Ohio 2005, 411 F.Supp.2d 897. **Removal** Of Cases 44

Even if **removing** parties were mislabeled as "third-party defendants," they were at best counterdefendants and, as such, could not **remove** case to **federal court** under statutory subsection permitting **removal** by a defendant or defendants of an action over which **federal court** has original jurisdiction. Starr v. Prairie Harbor Development Co., Inc., E.D.Wis.1995, 900 F.Supp. 230. **Removal** Of Cases 56

Counterdefendants were not entitled to **removal**, as they failed to show that they were proper parties to **remove**, that **removal** was timely, or that claims against them were separate and independent; counterdefendants were not properly characterized as third-party defendants, and mere filing of amended complaint within 30 days did not give counterdefendant additional 30 days to file their notice of **removal**. Dartmouth Plan, Inc. v. Delgado, N.D.Ill.1990, 736 F.Supp. 1489. **Removal** Of Cases 59; **Removal** Of Cases 79(1)

While a plaintiff opposing a counterclaim might functionally be a "defendant," such a plaintiff is not a defendant within the meaning of this section and may not **remove** the action or counterclaim even though the counterclaim would be **removable** if sued upon alone. Coditron Corp. v. AFA Protective Systems, Inc., S.D.N.Y.1975, 392 F.Supp. 158, 185 U.S.P.Q. 765. **Removal** Of Cases 77

Criminal defendants, persons entitled to remove

Defendant could not **remove** state court criminal case against defendant, charging him with disorderly conduct, possession of a firearm on school property, and disturbance of school, where defendant was neither an officer or agency of the United States nor a member of the armed forces, and state court had not refused to enforce defendant's federal, race-based civil rights. Massachusetts v. Azubuko, D.Mass.2009, 616 F.Supp.2d 174. **Removal** Of Cases 23; **Removal** Of Cases 70

Crossclaim defendants, persons entitled to remove

A defendant who filed an answer and cross-complaint seeking a personal judgment against the plaintiff thereby became a plaintiff and ceased to be a "defendant" entitled to **removal**; and it was immaterial whether such cross-complaint was filed at the

same time with the petition and bond for **removal** or subsequently. Hansen v. Pacific Coast Asphalt Cement Co., S.D.Cal.1917, 243 F. 283.

Counterclaim and cross-claim defendants are not proper parties to **remove** an action from state to **federal court**. Andersen v. Khanna, S.D.Iowa 2011, 827 F.Supp.2d 970. **Removal** of Cases 44

Party which originally filed action in state court to collect sums allegedly due on continuing guaranty agreements executed by defendants was precluded in its capacity as a plaintiff from **removing** action to **federal court** even if it was subjected to a cross petition by defendants in state court; accordingly, action was **removed** improvidently and was subject to being remanded to state court. Ford Motor Credit Co. v. Liles, W.D.Okla.1975, 399 F.Supp. 1282. **Removal** Of Cases 56

Generally, neither a third-party defendant nor a cross-defendant may **remove**. Mid-State Homes, Inc. v. Swain, W.D.Okla.1971, 331 F.Supp. 337. **Removal** Of Cases 56

Forum defendants, persons entitled to remove

Not-for-profit medical center that was home-state defendant could not seek **removal** of its former medical director's state-court action for breach of contract based on diversity jurisdiction. Assaf v. Trinity Medical Center, C.A.7 (Ill.) 2012, 696 F.3d 681. **Removal** of Cases 45

Defendant lawyer and his law firm who represented corporate debtor could not **remove** state-law claims based on diversity of citizenship that had been brought by debtor's creditor in state court, even though the parties were diverse, since creditor had sued lawyer and his firm in their home state. In re Repository Technologies, Inc., C.A.7 (Ill.) 2010, 601 F.3d 710, on remand 2010 WL 4038767. Bankruptcy 2095.11

Forum defendant rule, which limited **removal** on the basis of diversity jurisdiction to instances where no defendant was citizen of forum state, prohibited former employer's "snap **removal**," as forum defendant, of state court action before it had been properly joined and served as a defendant, and thus remand back to state court was appropriate; **removal** statute prohibited **removal** to **federal court** on the basis of diversity jurisdiction before at least one defendant was properly served. Pratt v. Alaska Airlines, Inc., W.D.Wash.2021, 538 F.Supp.3d 1163, amended and superseded 2021 WL 1910885, vacated 2021 WL 5561837. **Removal** of Cases 45; **Removal** of Cases 103

Forum defendant rule prohibited snow and ice **removal** subcontractor's insurer's **removal** of retailer's state court action, seeking, inter alia, declaration under the Pennsylvania Declaratory Judgments Act of insurer's duty to defend and indemnify retailer as an additional insured under general liability policy provided to subcontractor, with regard to underlying slip and fall action against retailer; subcontractor, contractor, contractor's insurer, individual who slipped and fell in retailer's parking lot, and his wife, who were all served as defendants, were all citizens of the forum state. Target Corporation v. Frederick Mutual Insurance Company, E.D.Pa.2018, 302 F.Supp.3d 695. **Removal** of Cases 45

Borrower was Connecticut citizen, and thus could not **remove** state mortgage foreclosure action against her on basis of diversity jurisdiction, even though she had undergone religious conversion, pursuant to which she considered her prior self to no longer exist, she did not use government services, such as garbage disposal and sewage, and she did not acknowledge legitimacy of state courts, where borrower was domiciled in Connecticut and mortgaged property was in Connecticut. Bank of America Nat. Ass'n v. Derisme, D.Conn.2010, 743 F.Supp.2d 93. **Removal** Of Cases 29

Resident defendants may not **remove** action to **federal court** on basis of diversity when they have been sued by non-resident plaintiff in state court. Hutchins v. Cardiac Science, Inc., D.Mass.2006, 456 F.Supp.2d 173. **Removal** Of Cases 45

Forum defendant rule precluded defendants from **removing** case brought in forum where they resided, even though diversity jurisdiction existed. Piper Jaffray & Co. v. Severini, W.D.Wis.2006, 443 F.Supp.2d 1016. **Removal** Of Cases 45

Defendant, seeking federal jurisdiction on diversity grounds, can only have his case **removed** to **federal courts** where he is a nonresident of the state wherein the action was brought. U.S. Fidelity & Guaranty Co. v. Montgomery, E.D.Pa.1957, 155 F.Supp. 657. **Removal** Of Cases 45

Third party defendants, persons entitled to remove

A "third-party counterclaim defendant," that is, a party first brought into the case as an additional defendant to a counterclaim asserted against the original plaintiff, is not a "defendant" who can **remove** under subsection (c) of the general **removal** statute, which addresses joinder of federal-law claims and state-law claims; the Supreme Court, in *Home Depot*, 139 S.Ct. 1743, ruled that third-party counterclaim defendants cannot obtain **removal** under subsection (a) of statute, and Court's analysis demanded the same conclusion with respect to subsection (c), as text of statute as a whole demonstrated that "defendants" means the same in (c) as in (a), caption of statute, "**Removal** of civil actions," indicates that "defendants" in (c) are defendants to complaint, not party named in counterclaim, and, as shown by other **removal** statutes, when Congress wishes to make **removal** available to parties other than original defendant, it says so. Bowling v. U.S. Bank National Association, As Trustee for C-Bass Mortgage Loan Asset-Backed Certificates, Series 2007-SP2, C.A.11 (Ala.) 2020, 963 F.3d 1030. **Removal** of Cases 59

Mortgagee and mortgage loan servicer, who mortgagors, as defendants in state-court mortgage foreclosure action, added as third-party defendants with respect to alleged violations of Fair Debt Collection Practices Act (FDCPA) and Maryland Consumer Debt Collection Act, could not **remove** the third-party claims, even though those claims were severed pursuant to administrative order from clerk of state trial court; third-party claims were part of foreclosure action, and administrative order merely bifurcated those claims to facilitate state trial court's case management. Rizwan v. Lender Services Inc., D.Md.2016, 176 F.Supp.3d 513. **Removal** Of Cases 44

Third-party defendants, in other words, those joined by defendant, rather than by plaintiff, cannot **remove** actions to **federal court** pursuant to **removal** statute's grant of right of **removal** to "the defendant or the defendants." Life Skills Village, PLLC v. Auto-Owners Ins. Co., E.D.Mich.2014, 16 F.Supp.3d 872. **Removal** of Cases 59

Insurer of tour operator, against whom injured party brought "third-party" bad faith failure to defend action, as operator's assignee, would be treated as "defendant" for purposes of **removal** statute, and thus, insurer would be accorded right of **removal**; original action was no longer in litigation, all claims between injured party and operator had been resolved in court-approved settlement, and injured party was pursuing current claim by virtue of assignment that was part of her settlement with operator. Rivera v. Fast Eddie's, Inc., D.N.M.2011, 829 F.Supp.2d 1088. **Removal** of Cases 44

City and correctional center employees, as third-party defendants against whom § 1983 third-party claim for constitutional violations against prisoner were asserted by physician and hospital in joinder complaint, were not "defendants" nor were third-party claims "joined" with non-**removable** claim, within meaning of **removal** statute, as required for **removal** of administratrix's medical malpractice action against physician and hospital arising from prisoner's death from brain injuries inflicted by cellmate, since third-party § 1983 claim was antagonistic to medical malpractice claim, and under well-pleaded complaint rule administratrix's choice of state forum was entitled to deference as master of her own complaint. Foster v. City of Philadelphia, E.D.Pa.2011, 826 F.Supp.2d 778. **Removal** of Cases 25(1); **Removal** of Cases 44; **Removal** of Cases 56

Third party defendants are not "defendants" for purposes of **removal** statute's grant of right of **removal** to "the defendant or the defendants." Waymire v. Leonard, S.D.Ohio 2010, 724 F.Supp.2d 876. **Removal** Of Cases 44

In airline employee's personal injury action against aircraft service company, in which company asserted third-party indemnification and contribution claims against the airline, **removal** of the entire action by the airline, a foreign state entity, was proper under the Foreign Sovereign Immunities Act, even though airline was only implicated by virtue of the third-party claims. Kully v. Aircraft Service Intern. Group, Inc., E.D.N.Y.2009, 662 F.Supp.2d 259. **Removal** Of Cases 41

Third-party defendant in the state court case did not have the right to **remove** action to **federal court**. Sharp General Contractors, Inc. v. Mt. Hawley Ins. Co., S.D.Fla.2007, 471 F.Supp.2d 1304. **Removal** Of Cases 44

Action brought by holder of note against mortgagor following default was not **removable** from Virgin Islands court for purposes of enforcing summary judgment by mortgagee as third-party defendant; phrase "the defendant or the defendants," for purposes of federal **removal** statute, referred only to original defendant against whom plaintiff had asserted claim. FirstBank Puerto Rico v. Gittens, D.Virgin Islands 2006, 466 F.Supp.2d 614. **Removal** Of Cases 44

Even assuming third-party defendants had the authority to **remove** cases to **federal court**, absent basis for federal jurisdiction as to claims against them, photographer, business entity that purchased rights to picture, and firm that designed packaging for disposable cameras which incorporated picture could not have **removed** camera manufacturer's state court third-party action to **federal court** until subject of picture established a direct cause of action against them. Bonner v. Fuji Photo Film, N.D.Cal.2006, 461 F.Supp.2d 1112. **Removal** Of Cases 44

Third-party **removal** is impermissible under **removal** statute. NCO Financial Systems, Inc. v. Yari, D.Colo.2006, 422 F.Supp.2d 1237. **Removal** Of Cases 56; **Removal** Of Cases 59

When third-party complaint is filed as part of larger case that is not itself **removable**, third-party complaint also is not **removable**, even if it arises under federal law or is between citizens of different states and thus would have been **removable** standing alone. Florida Dept. of Ins. ex rel. Western Star Ins. Co., Ltd. v. Chase Bank of Texas Nat. Ass'n, N.D.Fla.2002, 243 F.Supp.2d 1293. **Removal** Of Cases 56

Health insurer, as third-party defendant, in action brought by employee against employer for breach of contract and fraud, in connection with employer's failure to provide health insurance coverage, did not have authority to **remove** the action from state to **federal court**, under rule allowing defendants the power of **removal** in cases where **federal courts** would have original jurisdiction. Sanford v. Premier Millwork & Lumber Co., Inc., E.D.Va.2002, 234 F.Supp.2d 569. **Removal** Of Cases 44

Third-party defendant, petitioned into plaintiff's state action by defendant seeking indemnification against plaintiff's claims, did not come within the meaning of "defendant" to permit **removal** of claim under **removal** statute permitting only defendants to **remove** case, where third-party defendant's claim was not severed from original plaintiff's claims. BJB Co. v. Comp Air Leroi, N.D.Tex.2001, 148 F.Supp.2d 751. **Removal** Of Cases 44

Third-party defendants could not **remove** state court action to **federal court** on basis of diversity of citizenship, even if their citizenship was diverse, where original defendants were citizens of state in which action was brought. Brookover Financial Services, Inc. v. Beckley, W.D.Ky.1999, 56 F.Supp.2d 782. **Removal** Of Cases 59

Removal statute providing that, except as otherwise expressly provided by an act of Congress, any action brought in state court of which district courts have original jurisdiction may be **removed** did not apply to third-party defendant seeking **removal**. Neibuhr v. National R.R. Passenger Corp., D.D.C.1997, 955 F.Supp. 135. **Removal** Of Cases 11

Third-party defendants did not qualify as "defendants" under statutory subsection permitting **removal** of an action of which **federal court** has original jurisdiction by a defendant or defendants. Starr v. Prairie Harbor Development Co., Inc., E.D.Wis.1995, 900 F.Supp. 230. **Removal** Of Cases 56

Third party defendant's **removal** of case from state court was defective since the third party defendant was not yet a "defendant" in the cases when it **removed** them, where defendant serving third party petition had not received leave from state court as required by Texas rule; absent such leave, third party defendant had no right to appear voluntarily and could not have been forced to appear involuntarily as third party defendant, and time to **remove** did not run from receiving courtesy copy of pleading naming it as third-party defendant on theory that third-party foreign sovereign should not have to take the risk that it might lose right to **remove** if it fails to correctly determine when right to **remove** matures. Delgado v. Shell Oil Co., S.D.Tex.1995, 890 F.Supp. 1324, affirmed 231 F.3d 165, rehearing denied, certiorari denied 121 S.Ct. 1603, 532 U.S. 972, 149 L.Ed.2d 470, leave to file for rehearing denied 123 S.Ct. 1350, 537 U.S. 1229, 154 L.Ed.2d 1095. **Removal** Of Cases 59

Disability insurer as third-party defendant was not entitled to **remove** insured's claim against no-fault insurer and no-fault insurer's third-party claim, whether proper approach prohibits third-party defendant from **removing** case or permits **removal** of separate and independent claim; third-party claim depended on outcome of insured's claim for no-fault benefits. Garner v. MIC General Ins. Corp., E.D.Mich.1994, 869 F.Supp. 497. **Removal** Of Cases 59

Third-party defendant which was brought into action after defendants filed their notices of **removal** could also seek **removal**. Kern v. Jeppesen Sanderson, Inc., S.D.Tex.1994, 867 F.Supp. 525. **Removal** Of Cases 77

Third-party defendant could not **remove** case to **federal** **court** based on diversity of citizenship. Auto Transportes Gacela S.A. De C.V. v. Border Freight Distributing and Warehouse, Inc., S.D.Tex.1992, 792 F.Supp. 1471. **Removal** Of Cases 44

Third-party defendants may not **remove** state actions to **federal** **courts**; allowing such **removal** would nullify original plaintiff's choice of forum and, even if that problem could be resolved by **removing** third-party claims and remanding rest of case, such approach would nullify judicial economy that **removal** statute seeks to promote. Schmidt v. Association of Apartment Owners of Marco Polo Condominium, D.Hawai'i 1991, 780 F.Supp. 699. **Removal** Of Cases 59

An administrator of the Small Business Administration, who was named as defendant on a third-party claim, had no right to **remove** an action to **federal** **court** under the general **removal** statute. Fleet Bank-NH v. Engeleiter, D.N.H.1991, 753 F.Supp. 417. **Removal** Of Cases 59

This section contemplates **removal** of case only by original defendant, and third-party defendant is not entitled to invoke **removal** jurisdiction. Morris v. Marshall County Bd. of Educ., N.D.W.Va.1983, 560 F.Supp. 43. **Removal** Of Cases 77

Third-party defendant is not "defendant" within meaning of this section; therefore, manufacturer of lawn mower sold to department store had no standing to initiate **removal** of personal injury action brought against the department store by purchaser of lawn mower, even though manufacturer of lawn mower was defendant in third-party complaint brought by department store. Share v. Sears, Roebuck & Co., E.D.Pa.1982, 550 F.Supp. 1107. **Removal** Of Cases 77

Third-party defendant could not **remove** suit from state to **federal** **court**. Garnas v. American Farm Equipment Co., D.C.N.D.1980, 502 F.Supp. 349. **Removal** Of Cases 77

A fourth-party defendant is not a "defendant" within the meaning of this section permitting a defendant to **remove** a state court civil action to federal district court; thus, in the instant case, fourth-party defendant was not entitled to **remove** the entire state court case, which had been in progress for over a year. Croy v. Buckeye Intern., Inc., D.C.Md.1979, 483 F.Supp. 402. **Removal** Of Cases 77

Term "defendant" as used in this section governing **removal** is limited to plaintiff's defendant; thus, this section providing that whenever a separate and independent claim which would be **removable** if sued upon alone is joined with one or more otherwise nonremoval claims the entire case may be **removed** applies only to claims brought by plaintiff or plaintiffs and does

not authorize **removal** by third party or cross-claim defendants. Folts v. City of Richmond, E.D.Va.1979, 480 F.Supp. 621. **Removal** Of Cases 56

Under this section providing that any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be **removed** by defendant or defendants to the district court of the United States for the district and division embracing the place where such action is pending, right to **remove** is limited to plaintiff's defendants and is not available to third-party defendants. Fiblenski v. Hirschback Motor Lines, Inc., E.D.Ark.1969, 304 F.Supp. 283. **Removal** Of Cases 59

Word "defendant" as used in subsec. (a) of this section providing that except as otherwise expressly provided by act of Congress, any civil action brought in state court of which federal district courts have original jurisdiction, may be **removed** by "defendant" to federal district court for district and division embracing place where action is pending does not include third-party defendant. White v. Baltic Conveyor Co., D.C.N.J.1962, 209 F.Supp. 716. **Removal** Of Cases 59

Non-parties, persons entitled to remove

A non-party to a state-court proceeding has no right to **remove** that proceeding to **federal court**, even if the non-party has an interest or a stake in the proceedings. Andersen v. Khanna, S.D.Iowa 2011, 827 F.Supp.2d 970. **Removal** of Cases 44

Even if pension plan administrator was real-party-in-interest in ex-husband's state court action to vacate qualified domestic relations order (QDRO) following his ex-wife's death, administrator was not a "defendant," as required under **removal** statute to have standing to **remove** state action to **federal court**; administrator was non-party to divorce action, and so had no authority under **removal** statute. Gross v. Deberardinis, D.Del.2010, 722 F.Supp.2d 532. **Removal** Of Cases 44

Husband's health insurance carrier did not have a right, under **removal** statute, to **remove** divorce action filed in state court, in which action the state court ordered carrier to insure wife, where carrier was not a party to the divorce action. In re Notice of **Removal** Filed by William Einhorn, D.N.J.2007, 481 F.Supp.2d 345. **Removal** Of Cases 44

District of Columbia defendants, persons entitled to remove

Defendants in District of Columbia have right to **removal** concomitant with defendants sued in state courts. District of Columbia, for Use of John Driggs Co., Inc. v. Ranger Const. Co., D.C.D.C.1974, 394 F.Supp. 801. **Removal** Of Cases 9

Plaintiffs, persons entitled to remove

Parents of special education student, who had been diagnosed with severe neuropsychiatric conditions, were "defendants," for purposes of statute governing **removal** of civil actions, and thus they were eligible to **remove** to **federal court** proceeding brought against school district, on behalf of student, seeking to have district pay for student's placement at out-of-state academy under IDEA; while parents initially sought to recover from school district, and filed due process complaint, their status changed when school district sought state court's review of hearing examiner's decision regarding complaint, at which point school district became "plaintiff" for **removal** purposes. Steckelberg on behalf of AMS v. Chamberlain School District, C.A.8 (S.D.) 2023, 77 F.4th 1167. **Removal** of Cases 16

While defendant does have a right by statute to **remove** in certain situations, plaintiff is still the master of his own claim. Burns v. Windsor Ins. Co., C.A.11 (Ala.) 1994, 31 F.3d 1092. **Removal** Of Cases 25(1)

Plaintiff would not be allowed to **remove** state court action to **federal court**; **removal** statutes permitted only defendants to **remove**. American Intern. Underwriters (Philippines), Inc. v. Continental Ins. Co., C.A.9 (Cal.) 1988, 843 F.2d 1253. **Removal** Of Cases 77

No right exists in favor of a person who, as plaintiff, has filed an action in the state court to cause **removal** of such action to a **federal court**. In re Walker, C.A.9 (Cal.) 1967, 375 F.2d 678. See, also, Union Const. Co. v. Dillingham Corp., D.C.Tex.1971, 334 F.Supp. 502; Coastal Air Service, Inc. v. Tarco Aviation Service, Inc., D.C.Ga.1969, 301 F.Supp. 586. **Removal** Of Cases 44

Right of **removal** is vested exclusively in defendants, and plaintiff simply may not **remove** an action from a state court. Geiger v. Arctco Enterprises, Inc., S.D.N.Y.1996, 910 F.Supp. 130. **Removal** Of Cases 16

A plaintiff has no right of **removal** under this section. Smith v. St. Luke's Hospital, D.C.S.D.1979, 480 F.Supp. 58. **Removal** Of Cases 59

Plaintiffs in joint cause of action which certain defendant **removed** to **federal court** were not entitled to have other defendants **removed** to **federal court**, to have such unremoved defendants joined as parties needed for just adjudication or to leave to file amended complaint which included a securities count and which named unremoved defendants and another new defendant as defendants, in that **removal** was available to defendants only and not to plaintiffs. Coogan v. Deboer Properties Corp., S.D.Tex.1973, 354 F.Supp. 1058. **Removal** Of Cases 82

Under this section, party who is plaintiff in action at outset remains the plaintiff and can never **remove** case to **federal court**. Minkoff v. Budget Dress Corp., S.D.N.Y.1960, 180 F.Supp. 818. **Removal** Of Cases 44

A plaintiff either in name or in interest cannot **remove** a case from a state court to a federal district court. Barwick v. Piatt, E.D.S.C.1943, 52 F.Supp. 262. **Removal** Of Cases 17

Plaintiffs in contract dispute had no right to **remove** case from district court to bankruptcy court. Doyle v. Mellon Bank, N.A., E.D.Pa.2004, 307 B.R. 462. Bankruptcy 2095.11

Juridical entities, persons entitled to remove

Although entity that filed notice of **removal** of state court action brought on behalf of student against medical school, alleging medical malpractice, breach of contract, and negligence, had not formally intervened in the action or been joined as a defendant, the entity properly **removed** the action as the owner and operator of the school, which was a non-juridical entity. La Russo v. St. George's University School of Medicine, S.D.N.Y.2013, 936 F.Supp.2d 288, affirmed 747 F.3d 90. **Removal** of Cases 44

Arbitration proceedings, persons entitled to remove--Generally

Alleged customers who filed arbitration claim against securities broker/dealer were defendants in suit brought by broker/dealer to stay arbitration, and thus were entitled to **remove** case to **federal court**, even though customers initially sought relief through arbitration, where broker/dealer initially invoked the aid of a court, and customers were involuntarily summoned to state court. Oppenheimer & Co., Inc. v. Neidhardt, C.A.2 (N.Y.) 1995, 56 F.3d 352. **Removal** Of Cases 44

Although it was nominally the plaintiff in action for declaratory judgment, party which asserted that there was no arbitration agreement and which brought the action after arbitration proceedings were instituted would be deemed a defendant for **removal** purposes so that defensive claims which it asserted based on federal law could not provide for federal question jurisdiction. International Tin Council v. Amalgamet Inc., S.D.N.Y.1986, 645 F.Supp. 879, on remand 524 N.Y.S.2d 971, 138 Misc.2d 383. **Removal** Of Cases 25(1); **Removal** Of Cases 37

---- Demand to arbitrate, arbitration proceedings, persons entitled to remove

Fact that contractor had demanded arbitration of dispute arising under contract for construction of store and service center and had stated that demand was made pursuant to McKinney's N.Y. CPLR did not constitute contractor the "plaintiff" or "petitioner" in the state court proceeding, but rather the owner, which had petitioned in state court to stay arbitration, was the "petitioner" or "plaintiff," and contractor, as the "respondent" or "defendant" was entitled to seek **removal** to **federal court**. Sears Roebuck & Co. v. Glenwal Co., S.D.N.Y.1970, 325 F.Supp. 86, affirmed 442 F.2d 1350. **Removal** Of Cases 44

Where labor organization served on employer a notice to arbitrate under collective bargaining agreement, it was a plaintiff in that proceeding and employer's motion in state court to stay arbitration was merely a procedural step in proceeding under law of New York and hence **removal** of case to **federal court** by labor organization, which was not a defendant, was improper and proceeding would be remanded. Hall v. Sperry Gyroscope Co. Division of Sperry Rand Corp., S.D.N.Y.1960, 183 F.Supp. 891. **Removal** Of Cases 44; **Removal** Of Cases 103

---- Invocation of aid of court, arbitration proceedings, persons entitled to remove

Plaintiff, for purposes of **removal** of arbitration questions, is the party who first invokes aid of a court. Irving S. Cohen, Inc. v. Glen Raven Cotton Mills, Inc., S.D.N.Y.1967, 263 F.Supp. 107. See, also, Victorias Mill. Co. v. Hugo Neu Corp., D.C.N.Y.1961, 196 F.Supp. 64. **Removal** Of Cases 16

---- Control of litigation, arbitration proceedings, persons entitled to remove

Where union instituted arbitration proceeding by filing complaints with "Impartial Chairman" of dress industry as arbitrator of complaint against an employer and, were the union to drop its demands, case would be at an end, the union, as party in control of litigation, was the plaintiff for purposes of **removing** case from state to **federal court**. Minkoff v. Budget Dress Corp., S.D.N.Y.1960, 180 F.Supp. 818. **Removal** Of Cases 44

---- Motion to vacate award, arbitration proceedings, persons entitled to remove

Although shipowner demanded arbitration of dispute between it and charterer, where charterer filed in state court motion to vacate arbitration award for owner, owner was defendant within this section and was proper party to move for **removal** of case to **federal court**. Victorias Mill. Co. v. Hugo Neu Corp., S.D.N.Y.1961, 196 F.Supp. 64. **Removal** Of Cases 77

Citations to cooperate, persons entitled to remove

Representatives of vendor's estate received citation in eviction proceeding by Commonwealth against vendee solely to help and cooperate with vendee in upholding its title and to protect and preserve right of vendee to be made whole in case of eviction, and representatives were thus neither "defendants" nor "third-party defendants" and had no standing to **remove** eviction case to **federal court**. Com. of Puerto Rico v. Condado Development Corp., D.C.Puerto Rico 1961, 212 F.Supp. 386. **Removal** Of Cases 77

Claimant in receivership proceedings, persons entitled to remove

Claimant which, pursuant to order of state court, filed claims with receiver in receivership proceeding instituted by another and which was served with "counterclaim" by receiver occupied position of "plaintiff" in state court proceedings and was not in position of a "defendant" within **removal** provisions, and case was improvidently **removed** from state court and would be remanded. Magnusson v. American Allied Ins. Co., D.C.Minn.1968, 286 F.Supp. 573. **Removal** Of Cases 29

Condemnor of property, persons entitled to remove

Where railroad condemned property under I.C.A. § 471.6 and appealed from condemnation award to state district court, railroad was a "plaintiff" not a "defendant" within this section, so that railroad was not entitled to **removal**, though I.C.A. § 472.21 provided that in such appeal to state district court the appeal should be docketed in name of owner of land as plaintiff and in name of railroad as defendant. Chicago, R.I. & P.R. Co. v. Stude, U.S.Iowa 1954, 74 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 317, rehearing denied 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078. **Removal** Of Cases 44

Estate claimants, persons entitled to remove

Claimant who filed claim in New York Surrogate's Court for pension benefits from estate of deceased employer under the Employee Retirement Income Security Act could not be regarded as a defendant, and thus could not **remove** the action to **federal court**, when the estate's executrix filed a petition with the Surrogate's Court to determine the amount of the claim. In re Estate of Duane, S.D.N.Y.1991, 765 F.Supp. 1200. **Removal** Of Cases 59

Bank which filed claim in estate proceedings for alleged indebtedness which was the subject of a previously filed state court proceeding was not a "defendant" with regard to its claim against the estate, since bank was the party seeking to enforce alleged contractual rights against estate, which was the party resisting or defending the claim; because the bank was not a "defendant" it could not **remove** the proceedings to **federal court**. Spragins' Estate v. Citizens Nat. Bank of Evansville, N.D.Miss.1983, 563 F.Supp. 424. **Removal** Of Cases 44

Habeas corpus proceedings, persons entitled to remove

Habeas corpus petitioner, as petitioner in state court proceeding, had no power to **remove** his own case, and fact that petitioner was being threatened with deportation due to conviction, in conjunction with the slowness with which state habeas case was proceeding, did not effectively place him in position of a defendant so as to entitle him to **remove** his own case. Okot v. Callahan, C.A.9 (Wash.) 1986, 788 F.2d 631. **Removal** Of Cases 44

Intervenors, persons entitled to remove--Generally

The United States, which intervened in medical malpractice action to recover cost of medical care provided by Veterans' Administration, had no right to **remove** the case from state to **federal court**; the government could have pursued its claim alone in **federal court** but having voluntarily chosen to intervene could not be heard to complain of the choice of forum. Smith v. St. Luke's Hospital, D.C.S.D.1979, 480 F.Supp. 58. **Removal** Of Cases 59

Action by Illinois customer against Illinois bank to enjoin payment to Florida beneficiary under clean letter of credit was not **removable** at request of intervening beneficiary, despite beneficiary's contention that bank should be aligned with customer since bank allegedly did not resist injunction because of its fear that it could not recover from customer. Baker v. National Boulevard Bank of Chicago, N.D.Ill.1975, 399 F.Supp. 1021. **Removal** Of Cases 37

Petitioner for intervention in action in court of Commonwealth of Puerto Rico, whose petition had been denied, had no status to **remove** action to **federal court**. Kane v. Republica De Cuba, D.C.Puerto Rico 1962, 211 F.Supp. 855. **Removal** Of Cases 77

Where case is not otherwise **removable** to a **federal court**, claims introduced into the action by intervention did not afford a basis for such **removal**. Willingham v. Creswell-Keith, Inc., W.D.Ark.1958, 160 F.Supp. 741. **Removal** Of Cases 25(1)

Where original plaintiff in state court had never changed his pleadings since the entry of the intervenors, which would authorize **removal** if sought and the main defendant was the only defendant from whom original plaintiff could recover judgment, intervenor, who sought **removal** of action, was bound to accept issues as therein made in original action and could not change the nature of action so as to effect a **removal**. Hartwell v. Texas Consol. Oils, N.D.Tex.1950, 94 F.Supp. 609. **Removal** Of Cases 38

---- Involuntary, intervenors, persons entitled to remove

Intervener forced in by seizure of its property was a "defendant," within former § 71 of this title. Real Estate Loan Co. v. Brown, D.C.Ga.1927, 23 F.2d 329. **Removal** Of Cases 38

Real party in interest, persons entitled to remove

Real party defendant in interest was entitled to **remove** state court action to **federal court**, even if it was not named in complaint, had not entered appearance in state court, and had not been served. La Russo v. St. George's University School of Medicine, C.A.2 (N.Y.) 2014, 747 F.3d 90. **Removal** of Cases 44

Stakeholders, persons entitled to remove

Where judgment creditor of employee of United States Postal Service brought garnishment action against Postal Service in state court, Postal Service had role of mere stakeholder and was not "defendant" who could **remove** action to federal district court. Armstrong Cover Co. v. Whitfield, N.D.Ga.1976, 418 F.Supp. 972. **Removal** Of Cases 77

Stockholders in derivative suits, persons entitled to remove

Two stockholders were not "defendants" within meaning of this section, in derivative and representative state court action brought by another stockholder, though the two had opposed settlement while other stockholders had not, and **removal** of case to **federal court** by such two stockholders opposing settlement was improvident. Ackert v. Ausman, S.D.N.Y.1963, 217 F.Supp. 934. **Removal** Of Cases 77

Consent of all defendants, persons entitled to remove--Generally

In cases involving multiple defendants, all defendants must consent to **removal** under statute providing for **removal** from state court to district court of cases within the district court's subject matter jurisdiction. In re Federal Sav. and Loan Ins. Corp., C.A.11 (Fla.) 1988, 837 F.2d 432. **Removal** Of Cases 82

On petition to **remove** case from state court to **federal court**, defendants are to be treated collectively and as a general rule all defendants who may properly join in **removal** petition must do so. P. P. Farmers' Elevator Co. v. Farmers Elevator Mut. Ins. Co., C.A.7 (Ill.) 1968, 395 F.2d 546. See, also, Union Const. Co. v. Dillingham Corp., D.C.Tex.1971, 334 F.Supp. 502. **Removal** Of Cases 82

Where several defendants are jointly sued in state court on joint cause of action, suit, as a general rule, may not be **removed** to **federal court** on diversity grounds unless all defendants join in **removal**. Bradley v. Maryland Cas. Co., C.A.8 (Mo.) 1967, 382 F.2d 415. **Removal** Of Cases 82

Remand to state court was warranted, after **removal** by defendant insurer on diversity grounds, where other defendants did not consent to **removal**. Sinclair v. Auto-Owners Ins. Co., N.D.Ga.2014, 22 F.Supp.3d 1257. **Removal** of Cases 103

A co-defendant's consent was required for **removal** of a state case to federal district court under the rule of unanimity, where the **removing** defendant did not know whether a co-defendant had been properly joined and served at the time that it moved to **remove** the state case to federal district court. Palmetto Automatic Sprinkler Co., Inc. v. Smith Cooper Intern., Inc., D.S.C.2014, 995 F.Supp.2d 492. **Removal** of Cases 82

Defendants were not required by unanimity rule to obtain co-defendant's consent to **removal**, where plaintiff did not file return of service for co-defendant's summons until same day defendants filed their notice of **removal**. Doe v. Sunflower Farmers Markets, Inc., D.N.M.2011, 831 F.Supp.2d 1276. **Removal** of Cases 82

Personal injury suit, brought by Ohio employee against Illinois employer, could not be **removed** when none of eleven other defendants, none of which were fraudulently joined, agreed to **removal**. Yount v. Shashek, S.D.Ill.2006, 472 F.Supp.2d 1055. **Removal** Of Cases 82

Under "rule of unanimity," failure of all defendants to unanimously consent to **removal** in timely fashion precluded **removal** of Nevada's state-law suit against various pharmaceutical companies, alleging that defendants violated state law by fraudulently misrepresenting prescription-drug prices, even though all defendants faced a **removable** federal claim for breach of contract, based on their alleged violation of federal Medicaid-rebate best-price obligations, which had been joined with separate and independent non-**removable** claims. Montana v. Abbot Laboratories, D.Mass.2003, 266 F.Supp.2d 250, reconsideration denied 278 F.Supp.2d 101. **Removal** Of Cases 82

Removal in multi-defendant case requires unanimous consent of all defendants served with complaint. Lapoint v. Mid-Atlantic Settlement Services, Inc., D.D.C.2003, 256 F.Supp.2d 1. **Removal** Of Cases 82

Removing defendant must do more than simply state in **removal** notice that all defendants consent to **removal**. Smith v. Health Center of Lake City, Inc., M.D.Fla.2003, 252 F.Supp.2d 1336. **Removal** Of Cases 82

Removal made without consent of all defendants was procedurally defective. Mayo v. Christian Hosp. Northeast-Northwest, E.D.Mo.1997, 962 F.Supp. 1203. **Removal** Of Cases 82

One defendant's joinder in **removal**, although not given, was required to successfully **remove** case, even if defendant could not have **removed** action if he was sole defendant. Mullins v. Hinkle, S.D.W.Va.1997, 953 F.Supp. 744. **Removal** Of Cases 82

Removal statute, pursuant to "rule of unanimity," requires all defendants to consent to **removal** of civil action from state court to **federal** **court**. Nathe v. Pottenberg, M.D.Fla.1995, 931 F.Supp. 822. **Removal** Of Cases 82

In order to **remove** case under general **removal** statute, all defendants, including those without right to **remove** case, must join petition for **removal**, and unanimity is required whether **removal** is based on diversity or existence of federal question. Chaghervand v. CareFirst, D.Md.1995, 909 F.Supp. 304. **Removal** Of Cases 82

Generally, all defendants are required to join in notice of **removal**. Smilgin v. New York Life Ins. Co., S.D.Tex.1994, 854 F.Supp. 464. **Removal** Of Cases 82

Each and every defendant who can meet the jurisdictional requirements of the **removal** statute must join the petition for **removal** in order for the petition to be valid. Griffin v. Ford Consumer Finance Co., W.D.N.C.1993, 812 F.Supp. 614. **Removal** Of Cases 82

Failure of all defendants to join in or consent to **removal** petition precluded **removal**. Toyota of Florence, Inc. v. Lynch, D.S.C.1989, 713 F.Supp. 898. **Removal** Of Cases 82

Failure of all defendants to consent to **removal** precluded federal district court from granting petition for **removal**. Adams v. Aero Services Intern., Inc., E.D.Va.1987, 657 F.Supp. 519. **Removal** Of Cases 82

A **removal** cannot be effected unless all the parties on the same side of the controversy unite in the **removal** petition. Reiken v. Nationwide Leisure Corp., S.D.N.Y.1978, 458 F.Supp. 179. **Removal** Of Cases 82

Removal is improper unless all parties defendant file a petition for and are eligible for **removal**. Baldwin v. Perdue, Inc., E.D.Va.1978, 451 F.Supp. 373. **Removal** Of Cases 29; **Removal** Of Cases 82

Generally, petition for **removal** must be signed by all of the defendants. Melru Intern. Ltd. v. Finnsilver Corp., S.D.Fla.1977, 433 F.Supp. 277. **Removal** Of Cases 82

State court action may not be **removed** to **federal** **court** unless all the defendants join or consent to the **removal**. Glenmede Trust Co. v. Dow Chemical Co., E.D.Pa.1974, 384 F.Supp. 423. **Removal** Of Cases 82

When there is more than one defendant in state court action, all of the defendants must be joined or consent to **removal** petition. Resident Advisory Bd. v. Tate, E.D.Pa.1971, 329 F.Supp. 427. **Removal** Of Cases 82

All defendants must join in petition for **removal**. Nowell v. Nowell, D.C.Conn.1967, 272 F.Supp. 298. See, also, Fugard v. Thierry, D.C.Ill.1967, 265 F.Supp. 743; Moosbrugger v. McGraw-Edison Co., D.C.Minn.1963, 215 F.Supp. 486. **Removal** Of Cases 82

It is essential that all defendants named in original complaint be joined in petitions to **remove** action to federal district court. Urban Renewal Authority of City of Trinidad, Colo. v. Daugherty, D.C.Colo.1967, 271 F.Supp. 729. **Removal** Of Cases 82

It is necessary for all defendants to join together in order to effect a **removal** of state court actions to the United States district court. State Auto. Ins. Ass'n v. Kooiman, D.C.S.D.1956, 143 F.Supp. 614. **Removal** Of Cases 82

In cases arising under Constitution or law of United States, all defendants, other than merely nominal parties, whether served or not, must join in petition for **removal**. Rodriguez v. Union Oil Co. of Cal., S.D.Cal.1954, 121 F.Supp. 824. **Removal** Of Cases 82

---- Exceptions, consent of all defendants, persons entitled to remove

For **removal** to be proper, in cases with multiple defendants, as a general rule, each defendant must consent to **removal**, but three exceptions exist, where: (1) one or more defendants have not been served with the initial pleading at the time the **removal** petition was filed; (2) a defendant is merely a nominal or formal party-defendant; or (3) where the **removed** claim is a separate and independent claim. Busby v. Capital One, N.A., D.D.C.2013, 932 F.Supp.2d 114, appeal dismissed 2013 WL 3357830. **Removal** of Cases 82

---- Federal question claims, consent of all defendants, persons entitled to remove

District court had supplemental jurisdiction over all of the state-law claims asserted by pedestrian against state, state's Department of Transportation, property owner, and other defendants, arising from pedestrian's trip and fall on defective sidewalk, and thus city was required to obtain consent of all the other defendants prior to **removing** action to **federal** **court** based on pedestrian's assertion of § 1983 claim against it; there was a substantial overlap of issues, including how pedestrian tripped, whether the sidewalk was defective, why the sidewalk was defective, and whether defendants' alleged failure to act

was negligent, reckless, or more, and, in the interest of judicial economy, pedestrian would ordinarily be expected to try all claims in one judicial proceeding. Kovalev v. Callahan Ward 12th Street LLC, E.D.Pa.2021, 2021 WL 2856511. **Removal** of Cases 82

Remand was appropriate for suit **removed** on basis of federal question jurisdiction, where **removing** defendant violated rule against unanimity by not securing consent of all defendants. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2006, 431 F.Supp.2d 109. **Removal** Of Cases 103

When face of complaint reveals federal question, defendants desiring **removal** must express their unanimous consent to notice of **removal** within 30 days of service of complaint. Lapoint v. Mid-Atlantic Settlement Services, Inc., D.D.C.2003, 256 F.Supp.2d 1. **Removal** Of Cases 79(1); **Removal** Of Cases 82

Generally all defendants must join in a petition for **removal** from a state court to a **federal court** if **removal** is sought on ground that action arises under Constitution and laws of United States. John Hancock Mut. Life Ins. Co. v. United Office & Professional Workers of America, D.C.N.J.1950, 93 F.Supp. 296. Federal Civil Procedure 201; **Removal** Of Cases 82

---- Separate and independent claims, consent of all defendants, persons entitled to remove

In a case with more than one defendant, consent of all defendants is necessary for **removal** under subsec. (a) of this section allowing **removal** of any civil action brought in state court of which district courts have original jurisdiction; but such consent is not necessary for **removal** under subsec. (c) of this section authorizing **removal** whenever a separate and independent claim or cause of action, which would be **removable** if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action. Thomas v. Shelton, C.A.7 (Ind.) 1984, 740 F.2d 478. **Removal** Of Cases 59; **Removal** Of Cases 82

Consent of all defendants is required for **removal** under this section, unless plaintiff's claim against a **removing** defendant is separate and independent from other claims in the suit, in which case the defendant can **remove** the case without consent of other defendants. Bernstein v. Lind-Waldock & Co., C.A.7 (Ill.) 1984, 738 F.2d 179. **Removal** Of Cases 24

Insured's ERISA claim for benefits from her disability insurer and her state law claims against her automobile insurer for personal injury protection benefits and underinsured motorist (UIM) benefits arose out of the same automobile accident, and thus, district court had supplemental jurisdiction over her state law claims and, as a consequence, disability insurer's **removal** of insured's state law suit without the consent of the co-defendant automobile insurer was improper; the exemption from the rule of unanimity for separate and independent federal claims did not apply. Askew v. Metropolitan Property and Casualty Insurance Company, E.D.Mich.2016, 217 F.Supp.3d 982. **Federal Courts** 2541

Only exceptions to requirement that all defendants join in **removal** petition are if: (1) non-joining defendants have not been served with service of process at time **removal** petition is filed, (2) non-joining defendants are merely nominal or formal parties, and (3) **removed** claim is separate and independent claim joined with otherwise non-**removable** claims. Varela v. Flintlock Const., Inc., S.D.N.Y.2001, 148 F.Supp.2d 297. **Removal** Of Cases 82

Exception to rule requiring unanimous concurrence in **removal** among multiple defendants exists where **removal** is on basis of separate and independent federal-question claim that is joined with otherwise non-**removable** claims; in that instance only defendants subject to federal claim need join in **removal**. Mehney-Egan v. Mendoza, E.D.Mich.2000, 124 F.Supp.2d 467. **Removal** Of Cases 82

Defendant need not obtain consent of the other defendants in order to **remove** pursuant to statute providing for **removal** when separate and independent claim within federal question jurisdiction is joined with otherwise nonremovable claims. Fravel v. Stankus, N.D.Ill.1996, 936 F.Supp. 474. **Removal** Of Cases 82

Removal under this section governing **removal** of separate and independent claims or causes of action which would be **removable** if sued upon alone when joined with other nonremovable claims does not require joinder or consent of all defendants. Lemke v. St. Margaret Hosp., N.D.Ill.1982, 552 F.Supp. 833, on reconsideration 594 F.Supp. 25. **Removal** Of Cases 82

Ordinarily to effect **removal**, all properly joined defendants must join in the **removal** petition, but exception exists when separate and independent claim or cause which would be **removable** if sued upon alone is joined with one or more otherwise nonremovable claims or causes of action, in which case only defendants to separate and independent claim are required to seek **removal**. Rembrant, Inc. v. Phillips Const. Co., Inc., S.D.Ga.1980, 500 F.Supp. 766. **Removal** Of Cases 82

Removal of cause, either for diversity of citizenship or because federal question is involved, must be sought by all defendants except where there is separate or independent controversy wholly between citizens of different states. Pettit v. Arkansas Louisiana Gas Co., E.D.Okla.1974, 377 F.Supp. 108. **Removal** Of Cases 82

Where separate and independent claims exist, defendants affected thereby may **remove**. Moosbrugger v. McGraw-Edison Co., D.C.Minn.1963, 215 F.Supp. 486. **Removal** Of Cases 48

To permit **removal** of case by less than all defendants under this section, the **removable** claim or cause of action must be not only separate from, but also independent of, the nonremovable claim or cause of action. Doran v. Elgin Co-op. Credit Ass'n, D.C.Neb.1950, 95 F.Supp. 455.

---- Nominal parties, consent of all defendants, persons entitled to remove

South Carolina Uniform Declaratory Judgments Act law did not govern determination as to whether insured contractor was nominal party in insurer's action **removed** from South Carolina seeking declaratory judgment regarding each insurers' respective share of settlement in underlying action and equitable contribution from other insurers to extent that plaintiff was found to have overpaid its share, since **federal court** treated state court declaratory action that was **removed** as invoking the Federal Declaratory Judgment Act. Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co., C.A.4 (S.C.) 2013, 736 F.3d 255. **Federal Courts** 3045(4); **Removal** Of Cases 95; **Removal** Of Cases 114

Manufacturer's parent corporation was not nominal party in products liability action against its subsidiary and retailer, and thus parent's failure to timely consent to **removal** required remand to state court, where parent sold and delivered product to retailer. Benson v. Unilever U.S., Inc., S.D.Ill.2012, 884 F.Supp.2d 708. **Removal** of Cases 82; **Removal** of Cases 103

Agent of the District of Columbia was merely a "nominal or formal party-defendant" in plaintiff's state court action, and thus agent was not required to express consent independent from that of the District in order to achieve unanimous consent required for **removal** of action, where agent was sued in her official capacity. Ok Yeon Cho v. District of Columbia, D.D.C.2008, 547 F.Supp.2d 28. **Removal** Of Cases 82

Failure of nominal defendant to join in consent to **removal** of action did not require remand to state court. Dasma Investments, LLC v. Realty Associates Fund III, L.P., S.D.Fla.2006, 459 F.Supp.2d 1294. **Removal** Of Cases 82; **Removal** Of Cases 103

Formal or unnecessary parties are not included as "parties in interest" and cannot prevent the **removal** of an action to **federal court**. Barrientos v. UT-Battelle, LLC, S.D.Ohio 2003, 284 F.Supp.2d 908. **Removal** Of Cases 30; **Removal** Of Cases 31

Defendants in state court action were not nominal, and their consent thus was required before action could be **removed** as action over which **federal courts** had original jurisdiction; district court was not presented with settlement agreement releasing all state court defendants from liability. Fravel v. Stankus, N.D.Ill.1996, 936 F.Supp. 474. **Removal** Of Cases 82

Exceptions to rule of unanimity, under which consent of all defendants is required to **remove** action to **federal** **court**, exist where additional defendants are purely nominal or formal, or where additional defendants have not yet been served. Nathe v. Pottenberg, M.D.Fla.1995, 931 F.Supp. 822. **Removal** Of Cases 82

Indiana Department of Transportation (DOT) was not nominal defendant in action against DOT and other defendants, requiring DOT's consent for action arising from grade crossing accident to be **removed** to **federal** **court**; complaint alleged same facts against all named defendants. Siderits v. State of Ind., N.D.Ind.1993, 830 F.Supp. 1156. **Removal** Of Cases 82

All defendants must join in **removing** state court action to **federal** **court**; exceptions to this rule exist where additional defendants are "purely nominal or formal" or where they have not yet been served. Liebig v. DeJoy, M.D.Fla.1993, 814 F.Supp. 1074. **Removal** Of Cases 82

Nonconsenting defendants were nominal parties in suit seeking declaration that New York Assembly redistricting plan was valid and their consent to **removal** was not necessary; nonconsenting defendants failed to manifest any intent to obstruct upcoming elections, and thus, declaratory judgment against nonconsenting defendants would not afford plaintiffs any cognizable relief. Norman v. Cuomo, N.D.N.Y.1992, 796 F.Supp. 654. **Removal** Of Cases 82

Generally, all defendants who have been served, with exception of nominal or formal parties or parties improperly joined, must concur in **removal** petition to effect **removal**. Cowart Iron Works, Inc. v. Phillips Const. Co., Inc., S.D.Ga.1981, 507 F.Supp. 740. **Removal** Of Cases 82

All defendants, except purely nominal parties, who have been served and who may properly join in a **removal** petition, must so join in order to effect **removal**. Friedrich v. Whittaker Corp., S.D.Tex.1979, 467 F.Supp. 1012. **Removal** Of Cases 82

Absent allegation that suit contains separate and independent claims or causes of action, generally, all defendants who must have been served and who could join in **removal** petition, except truly nominal defendants, must join in **removal** petition in order to authorize **removal** to **federal** **court** of case instituted in state court. Perrin v. Walker, E.D.Ill.1974, 385 F.Supp. 945. **Removal** Of Cases 82

Nominal or formal parties, being neither necessary nor indispensable, are not required to join in petition for **removal**. Stonybrook Tenants Ass'n, Inc. v. Alpert, D.C.Conn.1961, 194 F.Supp. 552. **Removal** Of Cases 82

---- Fraudulently-joined parties, consent of all defendants, persons entitled to remove

Developer and manufacturer's statement that "all co-defendants have consented to **removal** of this matter" in its notice of **removal** satisfied unanimity requirement for **removal** of action brought by personal representative for estate of deceased child, as well as child's mother, against developers, manufacturers, marketers and sellers of line of toys equipped with small baby bottle and small plastic **removable** pacifier, alleging products liability and negligence arising when child died due to choking on pacifier; personal representative and mother filed state court action, developer and manufacturer filed notice of **removal** within statutory deadline after action was served, and other defendants provided written consent to developer and manufacturer for **removal**. Schmidt v. International Playthings LLC, D.N.M.2020, 2020 WL 7024252. **Removal** of Cases 82

Healthcare cost management company was not required to obtain consent of patient's guardian ad litem in order to **remove** patient's action seeking a declaration regarding amount healthcare cost management company would be entitled to recover on behalf of Medicaid plan, where guardian was fraudulently joined to action. Vestal v. First Recovery Group, LLC, M.D.Fla.2018, 292 F.Supp.3d 1304. **Removal** of Cases 82

Removal of case from state court by law firm, rather than by mortgage company's successor, did not render **removal** procedurally defective, in lawsuit brought by mortgagors against mortgage company and law firm, as its counsel; although law firm was diversity-defeating party that claimed to have been fraudulently joined, law firm was party defendant in case and had right to **remove** based on claims against firm. Bova v. U.S. Bank, N.A., S.D.Ill.2006, 446 F.Supp.2d 926. **Removal** Of Cases 46

When a plaintiff fraudulently joins a defendant to destroy **removability**, a **federal court** may ignore the lack of consent from that defendant and permit the **removal** of the case. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2006, 431 F.Supp.2d 109. **Removal** Of Cases 82

Ordinarily, all defendants must join in **removal** petition in order to effect **removal** on basis of diversity; however, parties fraudulently joined need not join in **removal** petition and are to be disregarded in determining whether there is complete diversity. Coughlin v. Nationwide Mut. Ins. Co., D.Mass.1991, 776 F.Supp. 626. **Removal** Of Cases 82

Where there was no basis for finding fraudulent joinder of respondent which did not join in petition for **removal**, **removal** petition filed by only one named respondent in state court action seeking confirmation of arbitrator's award was defective. McKay v. Point Shipping Corp., S.D.N.Y.1984, 587 F.Supp. 41. **Removal** Of Cases 82

Each and every defendant who can meet jurisdictional requirements must join in petition for **removal** in order for petition to be valid, and failure of all state defendants to join in petition compels remand to state court, except that nominal or formal parties, unknown defendants, and defendants fraudulently joined may be disregarded in determining compliance with this section. Woods v. Firestone Tire & Rubber Co., S.D.Fla.1983, 560 F.Supp. 588. **Removal** Of Cases 82

---- Indispensable parties, consent of all defendants, persons entitled to remove

Where the defendant is sued in her official capacity, she is not an indispensable party, and thus her consent to **removal** of the action is not required, because the suit is not against the official but rather against the official's office. Ok Yeon Cho v. District of Columbia, D.D.C.2008, 547 F.Supp.2d 28. **Removal** Of Cases 82

---- Service of process, consent of all defendants, persons entitled to remove

Borrowers failed to show that law firm and individual lawyers who represented lenders in their earlier foreclosure action against borrowers were properly served at time of **removal**, so as to require their consent for **removal** of borrowers' action against lenders, law firm, and lawyers, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO); even assuming that pro se plaintiffs could accomplish service by mail under Oklahoma law, there was no evidence that service was so accomplished before filing of notice of **removal**. Knight v. Mooring Capital Fund, LLC, C.A.10 (Okla.) 2014, 749 F.3d 1180. **Removal** of Cases 82

One of two defendants in action commenced in state court need not join in effective petition for **removal** of case to **federal court** if it had not been served with the state court summons. P. P. Farmers' Elevator Co. v. Farmers Elevator Mut. Ins. Co., C.A.7 (Ill.) 1968, 395 F.2d 546. **Removal** Of Cases 82

Automobile dealership was not "properly joined and served" with copy of blind injured pedestrian's complaint before automobile manufacturer, a citizen of California, moved for **removal** to **federal court** on basis of diversity, and therefore, dealership's consent to **removal** was not required, in action brought by pedestrian for product liability and disability discrimination, under Michigan law; pedestrian served dealership with summons and complaint naming "John Doe" dealership as defendant, and complaint did not allege facts from which reader might surmise that "John Doe" dealership referred to dealership that was served, since complaint stated that "John Doe" was located in different county more than 140 miles away from where dealership served

with summons and complaint was located. Steele v. American Honda Motor Company, Inc., E.D.Mich.2019, 413 F.Supp.3d 678. **Removal** of Cases 82

In the absence of any evidence that joinder of forum defendants was improper in patients' state court actions against various pharmaceutical companies seeking to recover damages for personal injuries allegedly resulting from use of blood pressure drug, **removal** of the cases violated the forum defendant rule because of the presence of forum defendants and the impossibility of service on those defendants before **removal**. Williams v. Daiichi Sankyo, Inc., D.N.J.2014, 13 F.Supp.3d 426. **Removal** of Cases 45

In declaratory judgment action pursuant to New Mexico Declaratory Judgment Act by surface owners against non-forum mineral rights owner and forum mineral rights owner, forum defendant rule barred **removal** by non-forum owner, even if forum owner was not served prior to **removal**; reduction of bias generated from forum owner's participation in action was present whether it was served before or shortly after action was **removed**, and there was no indication that surface owners joined forum owner for sole purpose of defeating diversity jurisdiction after **removal**. Lone Mountain Ranch, LLC v. Santa Fe Gold Corp., D.N.M.2013, 988 F.Supp.2d 1263. **Removal** of Cases 45

Nonforum defendant could not **remove** state court action before any defendant had been served when properly joined co-defendant was citizen of forum state; **removal** statute assumed that at least one defendant had been served, and precluding **removal** until at least one defendant was served protected against docket trolls with quick finger on trigger of **removal**. Gentile v. Biogen Idec, Inc., D.Mass.2013, 934 F.Supp.2d 313, on remand 2014 WL 861223, on remand 31 Mass.L.Rptr. 615. **Removal** of Cases 45; **Removal** of Cases 79(1)

Defendant's pre-service **removal** of state court breach of contract action, on basis of diversity jurisdiction, was not proper, given that definition of the word "served," as used in forum defendant rule, meant actual notice and involvement in the case, of which defendant had both; **removability** could not rationally turn on the timing or sequence of service of process, but rather would be governed by citizenship, given that purpose of federal diversity jurisdiction was to avoid possible prejudice to an out-of-state defendant. Campbell v. Hampton Roads Bankshares, Inc., E.D.Va.2013, 925 F.Supp.2d 800. **Removal** of Cases 45

Since permitting a forum defendant to appear and seek federal jurisdiction for an action through **removal**, whilst simultaneously asserting that it cannot be barred from **removing** because it has not been properly made party to the action through delivery of summons and a copy of the complaint is patently absurd result from literal reading of text of forum defendant rule, court instead interprets the word "served" used in the rule to mean actual notice and involvement in the case. Campbell v. Hampton Roads Bankshares, Inc., E.D.Va.2013, 925 F.Supp.2d 800. **Removal** of Cases 45

Defendant's failure to join in **removal** within 30 days of date it was properly served precluded **removal** of suit, even though nonsigning defendant joined in signing defendants' opposition to plaintiff's motion to remand, where nonsigning defendant did not file its answer until after its notice of consent to **removal** was filed. Benson v. Unilever U.S., Inc., S.D.Ill.2012, 884 F.Supp.2d 708. **Removal** of Cases 79(1); **Removal** of Cases 82

Out-of-state defendant could **remove** case with in-state defendants, without regard to whether out-of-state defendant had been served, where **removal** occurred prior to service on in-state defendants. Valido-Shade v. WYETH, LLC, E.D.Pa.2012, 875 F.Supp.2d 474. **Removal** of Cases 45

Service of process on attorney for West Virginia State Police (WVSP) and its superintendent by mail, rather than by personal service, in arrestee's suit against police for brutality and conspiracy to cover-up, was insufficient, and thus did not trigger period for WVSP and superintendent to consent to **removal** of action to **federal court**. Wolfe v. Green, S.D.W.Va.2009, 660 F.Supp.2d 738. **Removal** Of Cases 79(1); **Removal** Of Cases 82; States 204

In a completely diverse case, a non-forum defendant that has not yet been served may **remove** a state court action to **federal court** under general federal **removal** statute notwithstanding the fact that the plaintiff has already joined, but not yet served, a forum defendant. North v. Precision Airmotive Corp., M.D.Fla.2009, 600 F.Supp.2d 1263. **Removal** Of Cases 45

Resident defendant who has not been served may be ignored in determining **removability**. Cucci v. Edwards, C.D.Cal.2007, 510 F.Supp.2d 479. **Removal** Of Cases 45

Forum defendant rule, which rendered **removal** by defendant to **federal court** procedurally defective in state of which that defendant was citizen, did not apply to allegations that in-state law firm had been fraudulently joined to defeat diversity jurisdiction, in lawsuit **removed** from state court which had been brought by mortgagors against mortgage company and law firm, as its counsel; forum defendant rule applied only to defendants who had been properly joined and served within meaning of **removal** statute. Bova v. U.S. Bank, N.A., S.D.Ill.2006, 446 F.Supp.2d 926. **Removal** Of Cases 36; **Removal** Of Cases 45

Fact that mailed service would not be treated as "effective" under New Jersey law unless defendants answered or otherwise appeared did not prevent service from being proper for purposes of triggering requirement for **removal** that all defendants consent to **removal**. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2006, 431 F.Supp.2d 109. **Removal** Of Cases 82

Rule of unanimity in **removal** requires that in cases involving multiple defendants, all defendants who have been served must join or assent in the **removal** petition. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2006, 431 F.Supp.2d 109. **Removal** Of Cases 82

Suit by political association, challenging denial of its request to represent "Free Association" option on plebiscite ballot advising Congress of Commonwealth's preferred relationship to United States, was properly **removed** from commonwealth court, even though political parties that were necessary defendants did not join in **removal**; political parties had not been served at time of **removal**. Hernandez-Lopez v. Com. of Puerto Rico, D.Puerto Rico 1998, 30 F.Supp.2d 205. **Removal** Of Cases 82

Exception to rule that all defendants join in or consent to petition for **removal** applies when nonjoining defendant has not been properly served at time **removal** petition is filed; when nonjoining defendant is merely nominal or formal party; and when **removed** claim is separate and independent from other aspects of lawsuit filed in state court. Bellone v. Roxbury Homes, Inc., W.D.Va.1990, 748 F.Supp. 434. **Removal** Of Cases 82

Generally, in **removal** under this section governing **removal** of cases over which district court would have original jurisdiction, all defendants who have been served in state court proceeding must join in **removal** petition. Irving Trust Co. v. Century Export & Import, S.A., S.D.N.Y.1979, 464 F.Supp. 1232. **Removal** Of Cases 82

Generally, in absence of separable controversy, all defendants who are sued jointly in state court must join in petition for **removal** to **federal court**, but consent of nonresident defendant who has not been served is not necessary to **removal**, since it is possible that such defendant may never be served or, at least, may not be served before time for filing petition to **remove** has expired. First Nat. Bank of Chicago v. Mottola, N.D.Ill.1969, 302 F.Supp. 785, affirmed 465 F.2d 343. **Removal** Of Cases 82

The defendants who caused **removal** to **federal court** could not complain that, although codefendant not joining in **removal** had been served, there was no indication of record about service and that this made difficult their attempt to get all defendants to join in **removal**, where codefendant was a customer of a defendant seeking **removal** and the latter could easily have located and ascertained from codefendant whether it had been served and if it would join in petition to **remove**. Moosbrugger v. McGraw-Edison Co., D.C.Minn.1963, 215 F.Supp. 486. **Removal** Of Cases 82

Although it is generally required that all indispensable defendants must join in petitions for **removal**, one nonresident defendant may **remove** an action where another nonresident defendant has not been served with process. Colman v. Shimer, W.D.Mich.1958, 163 F.Supp. 347. **Removal** Of Cases 46

Unless an action involves separate or independent claims, all defendants must join in the petition for **removal**, except that if a nonresident defendant is not served with process he may be ignored and need not join in the petition for **removal**, but a resident defendant must be joined regardless of service. Gratz v. Murchison, D.C.Del.1955, 130 F.Supp. 709. **Removal** Of Cases 82

Unserved nonresident defendant need not be joined in **removal** petition. Turner Broadcasting System, Inc. v. Sanyo Elec., Inc., N.D.Ga.1983, 33 B.R. 996, affirmed 742 F.2d 1465. **Removal** Of Cases 82

---- Form of consent, consent of all defendants, persons entitled to remove

Letter from co-defendants' counsel to defendant's counsel, stating that co-defendants consented to **removal** of action to **federal court**, was sufficient to satisfy unanimity requirement, even though co-defendants did not themselves file document with court, where letter was filed with court by defendant as attachment to notice of **removal**. Simpson v. Union Pacific R. Co., N.D.Cal.2003, 282 F.Supp.2d 1151. **Removal** Of Cases 82

---- Realignment of parties, consent of all defendants, persons entitled to remove

Federal National Mortgage Association (FNMA), having brought state housing court eviction proceeding against former tenant who was still occupying premises to which FNMA acquired title through foreclosure, did not qualify as a "defendant" entitled to **remove** the action by virtue of parties' stipulation which provided for dismissal of the eviction complaint and transfer of the case, in which former tenant asserted state law counterclaims, to regular civil docket with former tenant named as plaintiff and FNMA named as defendant; the dismissal of FNMA's claim and the subsequent realignment of the parties pursuant to their stipulation did not create a second lawsuit and did not change the unitary nature of the action. Rodriguez v. Federal Nat. Mortg. Ass'n, D.Mass.2003, 268 F.Supp.2d 87. **Removal** Of Cases 44

Counterclaim defendants' failure to request in notice of **removal** that they be realigned as parties defendant did not thereby waive right to request realignment in response to other parties' motion for remand. Seminole County v. Pinter Enterprises, Inc., M.D.Fla.2000, 184 F.Supp.2d 1203. **Removal** Of Cases 37

Cross-bill plaintiffs, who were named as defendants in Virginia court suit in which voter challenged constitutional validity of ordinance establishing wards in Richmond and sought order restraining the holding of councilmanic elections until wards were reapportioned, who filed cross bill against other defendants seeking to enjoin them from taking any action with respect to a redistricting plan, were not formal or nominal parties and court would not realign them with voter for purpose of ruling on **removal** petition of cross-claim defendants; thus, **removal** of petition, which was not signed by the defendants who asserted the cross claims, could not be granted under this section requiring that in cases involving multiple defendants that all defendants join in the petition for **removal**. Folts v. City of Richmond, E.D.Va.1979, 480 F.Supp. 621. **Removal** Of Cases 37; **Removal** Of Cases 82

This section requires joinder of all defendants in petition for **removal**, but misaligned parties may be realigned and thus need not join in **removal** petition. Sersted v. Midland-Ross Corp., E.D.Wis.1979, 471 F.Supp. 298. **Removal** Of Cases 82

Generally, all respondents named in action in state court must join in petition for **removal** to federal district court, but rule has its exceptions, and among them is principle that if joinder of respondents is fraudulent, federal district court is free to realign the parties according to their true interests. New York Shipping Ass'n v. International Longshoremen's Ass'n, AFL-CIO, S.D.N.Y.1967, 276 F.Supp. 51. **Removal** Of Cases 37; **Removal** Of Cases 82

---- Miscellaneous actions, consent of all defendants, persons entitled to remove

In order for American Red Cross to **remove** case under general **removal** statute, it must obtain consent of all codefendants, even if those codefendants would not themselves be entitled to **remove** case, and notwithstanding that Red Cross is federal instrumentality. Doe v. Kerwood, C.A.5 (Tex.) 1992, 969 F.2d 165, rehearing denied 979 F.2d 1536. **Removal** Of Cases 82

Motorist did not comply with unanimity requirement for **removal**, warranting remand, in his action against member of the Massachusetts state police and five other state officials and entities, despite motorist's argument that the requirement was satisfied because there was no notice on the docket of the state court that any defendant had been served; motorist failed to obtain consent of all of the defendants who had been served at the time he submitted his notice of **removal**, and the state court docket clearly indicated that each of the five other defendants were served before the date motorist filed notice of **removal**, even though notice of service of process was, coincidentally, not entered on the docket until the date of filing. El-Bayeh v. Sierra, D.Mass.2022, 2022 WL 743997. **Removal** of Cases 82; **Removal** of Cases 103

It could be inferred that all defendants consented to **removal** in California truck drivers' class action against transportation companies and companies' chief executive officers (CEOs) for various state and federal claims regarding alleged misclassification of drivers as independent contractors, and thus **removal** to district court was not precluded on procedural grounds; defendants were represented by the same counsel and jointly filed notice of **removal**, opposition to drivers motion to remand, and motion for leave to file a sur-reply, and civil cover sheet which defendants filed upon **removal** listed all defendants. Tanious v. Gattoni, N.D.Cal.2021, 2021 WL 1325798. **Removal** of Cases 82

Defendant's statement in notice of **removal**, signed by that defendant's counsel only on behalf of that defendant, that all defendants concurred in **removal** was insufficient to show that all defendants consented to **removal**, where the other two defendants did not file separate written consent to **removal**. Smith v. Health Center of Lake City, Inc., M.D.Fla.2003, 252 F.Supp.2d 1336. **Removal** Of Cases 82

Out-of-state insurer was not required to obtain codefendant's joinder prior to **removal** of breach of contract claim brought by insurance brokers, where principal question of suit was whether insurer owed commissions and costs to brokers, brokers' declaratory claims against codefendant alleging that codefendant was not entitled to share in any portion of recovery received by brokers were entirely separate and distinct in terms of legal and factual issues, and codefendant's ability to share in recovery was entirely dependent upon brokers' right to recovery against insurer. Smilgin v. New York Life Ins. Co., S.D.Tex.1994, 854 F.Supp. 464. **Removal** Of Cases 52

Where plaintiff and nonconsenting defendants have sound reason for desiring to remain in state forum and where another route might be available for defendant to obtain expeditious ruling on federal question unique to claims against it, consent of all defendants is required for **removal**; general unanimity rule is supported by concern that one defendant not be permitted to impose his choice of forum on other unwilling defendants and unwilling plaintiff. Whitcomb v. Potomac Physicians, P.A., D.Md.1993, 832 F.Supp. 1011. **Removal** Of Cases 82

Lack of consent among all defendants to **removal** and lack of explanation as to why less than all defendants consented to **removal** within 30-day time period precluded **removal** of action from state court on ground that action was one over which federal district courts have original jurisdiction. Bradwell v. Silk Greenhouse, Inc., M.D.Fla.1993, 828 F.Supp. 940. **Removal** Of Cases 82

Absent joinder of all defendants in petition to **remove** plaintiff-mortgagors' class action suit to **federal court**, plaintiffs were entitled to remand to state court under general statutory **removal** provision requiring joinder of all eligible defendants. Griffin v. Ford Consumer Finance Co., W.D.N.C.1993, 812 F.Supp. 614. **Removal** Of Cases 103

Counterclaims against counterdefendants seeking **removal** were not separate and independent from at least one nonremovable claim with which they were joined; thus, where some counterdefendants opposed **removal**, **removal** was not possible. Dartmouth Plan, Inc. v. Delgado, N.D.Ill.1990, 736 F.Supp. 1489. **Removal** Of Cases 56

In order to **remove** wrongful death action to **federal court**, all defendants were required to join in petition for **removal** within statutory time period for filing petition. McManus v. Glassman's Wynnefield, Inc., E.D.Pa.1989, 710 F.Supp. 1043, reconsideration denied. **Removal** Of Cases 82

Where plaintiff did not join a nonremovable claim, and where second defendant was not nominal or formal party or party improperly joined, his concurrence in **removal** petition was required to effect **removal** under this section providing for **removal** of entire case whenever separate and independent claim or cause of action, **removable** if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action. Rembrant, Inc. v. Phillips Const. Co., Inc., S.D.Ga.1980, 500 F.Supp. 766. **Removal** Of Cases 82

Where all defendants did not join in petition to **remove** the case from state to **federal court** and, in fact, the private defendants now moved to remand, this section could not be relied upon to sustain **removal**. Mayberry v. Peninsula Psychiatric Hospitals, Inc., E.D.Tenn.1979, 470 F.Supp. 1268. **Removal** Of Cases 82

Where intervenor in action by bank against principal obligor and guarantors of debt had been properly joined and served as defendant at time of **removal**, but did not join in petition for **removal**, **removal** was improvident. Irving Trust Co. v. Century Export & Import, S.A., S.D.N.Y.1979, 464 F.Supp. 1232. **Removal** Of Cases 82

Action was improvidently **removed** to federal District Court where less than all defendants joined in **removal** petition. Committee of Interns and Residents v. New York State Labor Relations Bd., S.D.N.Y.1976, 420 F.Supp. 826. **Removal** Of Cases 82

Where less than all defendants in state court actions petitioned for **removal**, nonpetitioning defendants were not merely nominal parties, and there was no indication that nonpetitioning defendants had not been served with process, **removal** was improper. Howard v. George, S.D.Ohio 1975, 395 F.Supp. 1079. **Removal** Of Cases 82

Joint cause of action could not be **removed** to **federal court** where all defendants who were other than "nominal defendants" did not join in **removal** petition. Coogan v. Deboer Properties Corp., S.D.Tex.1973, 354 F.Supp. 1058. **Removal** Of Cases 82

Petition to **remove** action to federal district court was defective where a defendant who was more than a mere formal or nominal party had not been joined in the petition. Urban Renewal Authority of City of Trinidad, Colo. v. Daugherty, D.C.Colo.1967, 271 F.Supp. 729. **Removal** Of Cases 82

Case was improvidently **removed** to **federal court** and would on court's own motion be ordered remanded to state court where only two of the three defendants joined in petition for **removal**. Heatherington v. Alied Van Lines, Inc., W.D.S.C.1961, 194 F.Supp. 6. **Removal** Of Cases 103

Restyling of remainder of case, persons entitled to remove

State court clerk's restyling of remainder of case, after final disposition of claims of the original plaintiffs, did not make one original plaintiff a "defendant" for purposes of federal **removal** statute, even if restyling was authoritatively directed by state statute, rule or court order, and thus original plaintiff was not entitled to **remove** case which was "derived from a counterclaim" in original action. Reiter Oldsmobile, Inc. v. General Motors Corp., D.C.Mass.1979, 477 F.Supp. 125. **Removal** Of Cases 44

Sua sponte removal, persons entitled to remove

Removal statute providing that any civil action "may" be **removed** by the defendant means that a defendant can choose to **remove** action to district court or can choose to proceed in state forum chosen by plaintiff, but court is not vested with discretion as to whether action with concurrent state and federal jurisdiction will be **removed**. Mercy Hosp. Ass'n v. Miccio, E.D.N.Y.1985, 604 F.Supp. 1177. **Removal** Of Cases 16

Miscellaneous parties, persons entitled to remove

Lender did not properly serve borrower, which was an Ontario, Canada corporation, with summons and accompanying motion for summary judgment, pursuant to New York Civil Practice Law and Rule in lieu of complaint, more than 30 days before **removal**, and thus **removal** was timely; given that Canada was signatory to Hague Convention on service abroad, Ontario law set standard for effective service, Ontario law required that corporation be personally served by leaving a copy of document with officer, director, agent, or person who appeared to be in control or management of business, whereas secretary merely received package with summons and motion at door to office suite, and lender did not attest to aspects supporting inference that secretary appeared to be in control or management of borrower. Hudson Private LP v. Creative Wealth Media Finance Corporation, S.D.N.Y.2022, 2022 WL 4365573. **Removal** of Cases 79(1)

Statute governing **removal** of cases on basis of diversity of citizenship did not permit Floridan title insurer to "snap **remove**" Nevadan loan servicer's action for breach of contract and bad faith denial of insurance claims from Nevada state court to **federal court** before Floridan insurer and its co-defendants, including Nevadan title insurers which were not diverse with loan servicer, were served with complaint; allowing snap **removal** would not serve statutory purposes of preventing defeat of **removal** through improper joinder and protecting non-forum defendants from possible state-court bias in favor of forum-based litigants, but, rather, would encourage defendants to hijack plaintiffs' choice of forum by racing to **remove** prior to service. Bank of America, N.A. v. Fidelity National Title Group, Inc., D.Nev.2022, 2022 WL 909963. **Removal** of Cases 45

Discovery requests in barber's action against hair dye manufacturers, alleging that he developed bladder cancer from working with hair dyes containing aromatic amines, contained no new information, and thus discovery requests did not provide new basis for **removal** within 30 days of receipt of requests; information requested, which included request for ingredients in hair dye, was at the heart of the dispute from beginning, since barber consistently alleged that the hair dyes caused his bladder cancer. Brown v. Rite Aid Corporation, E.D.Pa.2019, 415 F.Supp.3d 588, on remand 2020 WL 13603221. **Removal** of Cases 79(1)

Federal home loan mortgage corporation's charter did not give corporation alone the option to **remove** an action to **federal court**; charter did not expressly limit the ability of other parties to **remove**, but, rather, merely appeared to provide corporation more flexibility than it would otherwise have in determining when and how to **remove**. Federal Home Loan Mortg. Corp. v. Matassino, N.D.Ga.2012, 909 F.Supp.2d 1377, reconsideration denied 911 F.Supp.2d 1276. **Removal** of Cases 44

Administrator of decedent's estate was precluded from **removing** his civil rights action against tax investment group, arising from group's tax sale purchase of home that was part of estate, even if state court had not already reached final judgment; under federal rules, **removal** was only available to defendants. Harpagon Co., LLC v. FXM, P.C., N.D.Ga.2009, 653 F.Supp.2d 1336. **Removal** Of Cases 44

School which sought review of state agency's decision under Individuals with Disabilities Education Act (IDEA) was plaintiff in action, so that student was defendant entitled to seek **removal** from state to **federal court**, despite claim that student and his parents were plaintiffs because they had sought administrative hearing. Yankton Area Adjustment Training Center, Inc. v. Oleson By and Through Oleson, D.S.D.1995, 897 F.Supp. 431. **Removal** Of Cases 45

Where unincorporated association of residents in urban renewal area and association's president and past-president had filed preliminary objections which did not raise question of jurisdiction over the person, they had actively participated in conferences with state court judge and were named in the original complaint in state court, such defendants were under jurisdiction of the state court and were "defendants in the state action" within meaning of this section. Resident Advisory Bd. v. Tate, E.D.Pa.1971, 329 F.Supp. 427. **Removal** Of Cases 77

Railroad which perfected statutory appeal to state court from city's assessment for construction of improvements along railroad lands was a "defendant" for purposes of **removal** in view of the respective interests of the parties and was entitled to **remove** case to **federal court**. City of Owatonna v. Chicago, R. I. & P. R. Co., D.C.Minn.1969, 298 F.Supp. 919. **Removal** Of Cases 77

CIVIL ACTIONS BROUGHT IN STATE COURTS

Civil actions brought in state courts generally

Under this section concerning **removal** of actions from state courts, only civil actions may be **removed** from a state to a **federal court**. City of Thibodaux v. Louisiana Power & Light Co., C.A.5 (La.) 1958, 255 F.2d 774, certiorari granted 79 S.Ct. 154, 358 U.S. 893, 43 L.Ed.2d 120, reversed on other grounds 79 S.Ct. 1070, 360 U.S. 25, 3 L.Ed.2d 1058, rehearing denied 79 S.Ct. 1442, 360 U.S. 940, 3 L.Ed.2d 1552. **Removal** Of Cases 4

Removal of state court action to **federal court** is appropriate only when complaint filed in state court properly could have been filed in **federal court**. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. **Removal** Of Cases 11

Civil actions within section, civil actions brought in state courts--Generally

The term "civil action" as used in this section is a civil suit. Stoll v. Hawkeye Cas. Co. of Des Moines, Iowa, C.A.8 (S.D.) 1950, 185 F.2d 96. **Removal** Of Cases 4

For purposes of **removal** statute, which provides for **removal** of "any civil action brought in a State court of which the district courts of the United States have original jurisdiction," a complaint that contains a federal claim is a "civil action" within the original jurisdiction of the **federal courts**. Creed v. Virginia, E.D.Va.2009, 596 F.Supp.2d 930. **Removal** Of Cases 4; **Removal** Of Cases 11

---- Law governing, civil actions within section, civil actions brought in state courts

NFIA did not completely preempt homeowners' action against subdivision developers and engineering firms that designed subdivision's storm water drainage features, alleging tort claims under Texas law for negligence, gross negligence, and violations of Texas Deceptive Trade Practices Act (DTPA), arising out of damage homes sustained during Hurricane Harvey, and thus homeowners' claims were not subject to **removal** to **federal court**; while developers and firms asserted that homeowners challenged floodplain determinations made by Federal Emergency Management Agency (FEMA), homeowners' petition did not challenge such determinations, homeowners' claims did not arise out of federal flood insurance policies, and there was no indication NFIA created a cause of action that replaced state tort claims. Alexander v. Woodlands Land Development Company L.P., S.D.Tex.2018, 325 F.Supp.3d 786. Antitrust and Trade Regulation 132; Negligence 1004; **Removal** of Cases 25(1); States 18.15

Matters bearing upon **removal**, including determination of when civil action is brought, are governed by federal law; state law and matters of state procedure are not controlling. Cowart Iron Works, Inc. v. Phillips Const. Co., Inc., S.D.Ga.1981, 507 F.Supp. 740. **Federal Courts** 3025(5)

Federal and not state law determines whether state court action is "civil action" within meaning of this section and § 1332 of this title. Quinn v. Book Named "Sixty Erotic Drawings From Juliette", D.C.Mass.1970, 316 F.Supp. 289. **Federal Courts** 3025(1); **Federal Courts** 3025(5)

Nature of proceeding is necessarily determinative of its **removability**; and characterization of proceeding as a "civil action at law" under local rules cannot render otherwise unremovable action a **removable** action under this chapter. Crivello v. Board of Adjustment of Borough of Middlesex, D.C.N.J.1960, 183 F.Supp. 826. **Removal** Of Cases 4

---- Considerations governing, civil actions within section, civil actions brought in state courts

Action brought by and in an agency of the Commonwealth of Puerto Rico may be considered a "civil action brought in a state court" for **removal** purposes where the agency proceedings are adjudicative in nature. Departamento de Asuntos del Consumidor (DACO) v. Oriental Federal Sav., D.Puerto Rico 1986, 648 F.Supp. 1194. **Removal** Of Cases 4

---- Administrative proceedings, civil actions within section, civil actions brought in state courts

Federal district court lacked federal question jurisdiction over administrative action with filed with Puerto Rico Office of Commissioner of Insurance (OCI) by association of private laboratory clinics alleging that health insurance provider's unilateral imposition of reduction of its reimbursement rates violated Puerto Rico's Prompt Payment Act, and thus action could not be **removed**, even though provider argued that association's claims were converted from state law claims to federal claims once OCI decided to interpret association's claims as separate claims by its individual members because it could then assert that collective objection to rate changes by competitors violated Sherman Act, where association's claims did not necessitate affirmative ruling of federal law. Asociacion Puertoriquena De Duenos De Laboratorios Clinicos Privados, Inc. v. Humana Health Plans of Puerto Rico, Inc., D.Puerto Rico 2013, 948 F.Supp.2d 181. **Removal** Of Cases 19(1)

Functions and powers of Massachusetts Commission Against Discrimination (MCAD) weighed against a finding that MCAD was a state court, as required to render **removal** of an age discrimination in employment action from the MCAD proper; while MCAD was required to follow the rules of evidence then prevailing in Massachusetts courts, MCAD did not have power to enforce its own judgments, MCAD exercised significant non-judicial powers in the course of its adjudicative proceedings, MCAD was charged with significant legislative duties, including adopting, promulgating, amending and rescinding rules to prevent discrimination, statute establishing MCAD did not construe it as a court of record or as part of state's judicial structure, and state regulation indicated that the primary function of MCAD was administrative, rather than judicial, and that the legislature did not intend MCAD to operate as a state court. Whelchel v. Regus Management Group, LLC, D.Mass.2012, 914 F.Supp.2d 83. **Removal** of Cases 9

State administrative proceedings before the Minnesota Commerce Commissioner, acting pursuant to the Minnesota Corporate Take-Overs Act, was not a "civil action brought in a state court," within meaning of **removal** statute, and matter would therefore be remanded to the Commissioner, despite constitutional challenge to the Minnesota statute, which could well be rendered moot by outcome of the administrative proceeding. Matter of Registration of Edudata Corp., D.C.Minn.1984, 599 F.Supp. 1089. **Removal** Of Cases 4; **Removal** Of Cases 102

---- Appeals from administrative bodies, civil actions within section, civil actions brought in state courts

Appeal to state court, from town zoning board of adjustment's (ZBA's) decision declining to void radio tower operation permit for noncompliance with interference abatement conditions, on grounds of federal preemption, could be **removed** to **federal court** even though appeal took form of statement of questions rather than traditional pleading. Freeman v. Burlington Broadcasters,

Inc., C.A.2 (Vt.) 2000, 204 F.3d 311, certiorari denied 121 S.Ct. 276, 531 U.S. 917, 148 L.Ed.2d 201. **Removal** Of Cases 25(1)

When Minnesota corporation appealed to state district court from order of Minnesota State Railroad and Warehouse Commission dismissing corporation's complaint seeking order setting aside certain railroad right of way for use of corporation as site for public warehouse, such proceeding became a "civil action" within meaning of this section and proceeding was **removable** on railroad's petition as diversity of citizenship existed and amount in controversy exceeded $3,000 [then existing jurisdictional amount, now $75,000], and federal district court had "original jurisdiction" within meaning of this section and §§ 1331 and 1332(a) of this title. Range Oil Supply Co. v. Chicago, R.I. & P. R. Co., C.A.8 (Minn.) 1957, 248 F.2d 477. **Removal** Of Cases 4; **Removal** Of Cases 11

Removal of action brought by pro se tenant evicted from subsidized housing against city housing authority was not warranted, under statute providing for **removal** of civil action brought in state court, where the purported state court action was really an appeal of an administrative decision by the city housing authority. Felts v. Cleveland Housing Authority, E.D.Tenn.2011, 821 F.Supp.2d 968. **Removal** of Cases 70

Where railroad perfected statutory appeal to state court from city's assessment against railroad of portion of costs of improvements along railroad lands, case was a "civil action" within original jurisdiction of the **federal courts** and right to **removal** was not affected by state statutory procedure giving rise to cause of action, and fact that there was no trial de novo in assessment appeals did not deprive assessment appeal of its judicial characteristics; hence railroad was entitled to **removal** of case to **federal court**. City of Owatonna v. Chicago, R. I. & P. R. Co., D.C.Minn.1969, 298 F.Supp. 919. **Removal** Of Cases 4

Proceeding in lieu of prerogative writ of certiorari, commenced in Superior Court of New Jersey for judicial review of action of zoning board in granting variance, had none of attributes of a "civil action" of which federal district court would have had original jurisdiction and, therefore, such proceeding, though denominated a "civil action at law", was not **removable**. Crivello v. Board of Adjustment of Borough of Middlesex, D.C.N.J.1960, 183 F.Supp. 826. **Removal** Of Cases 4

Institution, pursuant to § 1365 of Title 7, providing therefor, or proceedings for court review of findings of a local review committee appointed by the Secretary of Agriculture to review, upon application, an established marketing quota of any dissatisfied farmer is a "civil action" as such term is used in this section, and such an action therefore is **removable**. Vann v. Jackson, E.D.N.C.1958, 165 F.Supp. 377. **Removal** Of Cases 4

Appeal to Minnesota District Court from order of Railroad and Warehouse Commission is a civil suit which, under appropriate circumstances, may be **removed** to **federal court**, but plaintiff is bound by choice of forum made, and only defendant may demand and obtain **removal**. Rock Island Motor Transit Co. v. Murphy Motor Freight Lines, D.C.Minn.1952, 101 F.Supp. 978. **Removal** Of Cases 4; **Removal** Of Cases 44

---- Arbitration proceedings, civil actions within section, civil actions brought in state courts

Proceeding by employer in state court to compel union to perform its contractual obligation to arbitrate was a "suit" within § 185 of Title 29 authorizing suit for violations of labor contract affecting interstate commerce to be brought in **federal court** and was a "civil action" within this section. Old Dutch Farms, Inc. v. Milk Drivers and Dairy Emp. Union Local 584, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, E.D.N.Y.1963, 222 F.Supp. 125. **Removal** Of Cases 19(5)

State may characterize arbitration proceedings in any manner it wishes for purposes of its own internal procedure, but in deciding **removal** questions, **federal courts** must construe this section based upon their own determinations. Victorias Mill. Co. v. Hugo Neu Corp., S.D.N.Y.1961, 196 F.Supp. 64. **Removal** Of Cases 23

Proceeding to compel arbitration pursuant to state statute was a "civil action" within meaning of this section. Lummus Co. v. Commonwealth Oil Refining Co., S.D.N.Y.1961, 195 F.Supp. 47. **Removal** Of Cases 4

Where labor organization served notice on employer to arbitrate under collective bargaining agreement, suit was pending in court under New York law so as to enable employer to move in New York court for stay of proceeding and as soon as employer made that motion entire proceeding became ripe for **removal** to **federal court**, that is, it became a civil action within meaning of this section. Hall v. Sperry Gyroscope Co. Division of Sperry Rand Corp., S.D.N.Y.1960, 183 F.Supp. 891. **Removal** Of Cases 4

A "special proceeding" in a New York state court brought pursuant to New York Arbitration Law, McKinney's N.Y. CPLR 7501 et seq., is a "civil action" within this section permitting **removal** to **federal court** of a "civil action" only. Minkoff v. Budget Dress Corp., S.D.N.Y.1960, 180 F.Supp. 818. **Removal** Of Cases 3

---- Civil rights actions, civil actions within section, civil actions brought in state courts

City's state-court complaint asserting Pennsylvania law claim for wrongful use of civil proceedings, which it brought against arrestee and his attorney, who had brought federal civil rights lawsuit against city, raised disputed issue of whether arrestee and his attorney reasonably believed the underlying federal civil rights claims were valid under existing or developing law and **federal court's** determination of this issue would not disrupt any federal-state balance approved by Congress, as required for arrestee and his attorney to **remove** city's action based on federal-question jurisdiction; while Pennsylvania had an interest in making sure its citizens were not sued for an improper purpose in **federal court**, the **federal courts** had at least an equal interest in preventing improper, frivolous litigation. City of Greensburg v. Wisneski, W.D.Pa.2015, 75 F.Supp.3d 688. **Removal** of Cases 19(1); **Removal** of Cases 25(1)

Term "civil action" in **removal** statute, 28 U.S.C.A. § 1441, did not require that entire action be within **federal court's** original jurisdiction in order for it to be **removable**; therefore, § 1983 damage claim could be treated as a separate "action", and **removable**. Langford v. Gates, C.D.Cal.1985, 610 F.Supp. 120. **Removal** Of Cases 49.1(1)

---- Condemnation proceedings, civil actions within section, civil actions brought in state courts

Under Iowa law I.C.A. § 472.3 providing for condemnation of land by railway by filing application with sheriff and providing for appeal from award to state district court when proceeding has reached state of perfected appeal and jurisdiction of state district court is invoked, proceeding becomes in its nature a civil action and is subject to **removal** by defendant to United States district court. Chicago, R.I. & P.R. Co. v. Stude, U.S.Iowa 1954, 74 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 317, rehearing denied 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078. **Removal** Of Cases 4

Proceeding before Nebraska court of condemnation, which had authority only to fix valuation, to condemn gas distribution system was, before lapse of ninety days after valuation, not a "civil action" within this section. Village of Walthill, Neb. v. Iowa Elec. Light & Power Co., C.A.8 (Neb.) 1956, 228 F.2d 647. **Removal** Of Cases 4

No basis existed for finding that city's proposed design for railroad grade crossing would impede rail operations or pose undue safety risks, and therefore Interstate Commerce Commission Termination Act (ICCTA) did not completely preempt state eminent domain law in city's action against railroad company to condemn property needed to construct crossing, and federal question jurisdiction did not exist to support **removal**. City of Sachse, Texas v. Kansas City Southern, E.D.Tex.2008, 564 F.Supp.2d 649, reconsideration denied 2008 WL 2704671. Eminent Domain 3; **Removal** Of Cases 25(1); States 18.69

City's eminent domain proceeding in Texas state court was "civil action brought in a State court," as required for proceeding to be **removable** under general **removal** statute, even though condemnee **removed** proceeding before disinterested freeholders appointed to assess price to be paid to it, pursuant to Texas's two-step process for eminent domain, had made determination of value of property proposed to be condemned. City of Sachse, Texas v. Kansas City Southern, E.D.Tex.2008, 564 F.Supp.2d 649, reconsideration denied 2008 WL 2704671. **Removal** Of Cases 4

Proceeding on petition to review order of Missouri Public Service Commission finding condemnation of certain subterranean geological strata for storing natural gas to be in public interest was not founded on claim of right arising under Constitution or laws of United States and was not a civil action, brought in a state court, of which the district courts of the United States have original jurisdiction, and hence proceeding would be remanded to state court from whence it had been **removed**. Collins v. Public Service Com'n of State of Mo., W.D.Mo.1955, 129 F.Supp. 722. **Removal** Of Cases 4

An action to condemn land under state law is a "civil action" within this section and may be brought in the federal district court of the district in which the land lies. Chicago, R. I. & P. R. Co. v. Kay, S.D.Iowa 1952, 107 F.Supp. 895, affirmed in part, reversed in part on other grounds 204 F.2d 116, rehearing denied 204 F.2d 954, certiorari granted 74 S.Ct. 46, 346 U.S. 810, 98 L.Ed. 338, affirmed 74 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 317, rehearing denied 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078. **Removal** Of Cases 4

Condemnation proceedings are "civil actions" within meaning of this section. Algonquin Gas Transmission Co. v. Gregory, D.C.Conn.1952, 105 F.Supp. 64. **Removal** Of Cases 4

---- Criminal actions, civil actions within section, civil actions brought in state courts

A petition to have the district court make an order **removing** a criminal case pending against petitioner in the municipal court to the United States district court was properly denied on the ground that it was frivolous. Michaels v. People of State of Cal., C.A.9 (Cal.) 1954, 216 F.2d 617. **Removal** Of Cases 89(2)

State's petition to exhume body was civil action and could be **removed** to **federal** **court**, even though state claimed that its investigation into cause of death was criminal in nature; exhumation would serve only academic and historical goals. Exhumation of Lewis, M.D.Tenn.1998, 999 F.Supp. 1066. **Removal** Of Cases 23

Where state proceeding, whereby Attorney General sought to have book declared obscene, was merely ancillary to criminal prosecution and served only to aid in enforcement of criminal law, such proceeding, for **removal** purposes, was not "civil action" within this section and § 1441 of this title. Quinn v. Book Named "Sixty Erotic Drawings From Juliette", D.C.Mass.1970, 316 F.Supp. 289. **Removal** Of Cases 4

This section was not applicable to petition for **removal** of homicide prosecution from state court, since this section is specifically limited to civil actions. Rand v. State of Ark., W.D.Ark.1961, 191 F.Supp. 20. **Removal** Of Cases 2

The expression "civil action" within this section providing for **removal** to **federal** **court** of any civil action brought in state court is used in contradistinction to "criminal case" or action or proceeding. Range Oil Supply Co. v. Chicago, R. I. & P. R. Co., D.C.Minn.1956, 140 F.Supp. 283. **Removal** Of Cases 4

---- Disciplinary proceedings, civil actions within section, civil actions brought in state courts

Disciplinary proceeding before state bar association grievance committee was not a "civil action" within contemplation of this section. Alaska Bar Ass'n v. Dickerson, D.C.Alaska 1965, 240 F.Supp. 732. **Removal** Of Cases 4

---- Dismissed actions, civil actions within section, civil actions brought in state courts

Under Missouri law, "one recovery" rule barred wrongful death claims by smoker's widow and children against cigarette retailer and distributor, and thus citizenship of retailer and distributor could be ignored in determining **removability** of their state court products liability action against tobacco manufacturers on basis of diversity jurisdiction, where state court had dismissed smoker's products liability claims against retailer and distributor in his lifetime. Thompson v. R.J. Reynolds Tobacco Co., C.A.8 (Mo.) 2014, 760 F.3d 913. Death 7; **Removal** of Cases 36

Even after an action has been dismissed in the trial court, so long as there is time to insist on reconsideration or appellate review, a case continues to be a "civil action" brought to redress a private right, for purposes of **removal** under federal statute. Nieto v. University of N.M., D.N.M.2010, 727 F.Supp.2d 1176. **Removal** Of Cases 4

---- Landlord and tenant actions, civil actions within section, civil actions brought in state courts

Where proceedings involving landlord and tenant were properly brought in Municipal Court of the City of New York, they were not covered by this chapter, dealing with **removal** of cases. Spampinato v. M. Breger & Co., Inc., E.D.N.Y.1954, 124 F.Supp. 119. **Removal** Of Cases 3

Action or summary proceeding by landlord, a New York corporation, against tenant, a corporation of a foreign country, to recover possession of realty and for rents alleged due, and involving an amount in excess of $3,000 [then existing jurisdictional amount, now $75,000] was a "civil action" subject to **removal** from Municipal Court of City of New York, Borough of Brooklyn, to United States District Court for the Eastern District of New York on ground of diversity of citizenship. Famous Realty v. Flota Mercante Grancolombiana, S.A., E.D.N.Y.1948, 81 F.Supp. 553. **Removal** Of Cases 4

---- Mass actions, civil actions within section, civil actions brought in state courts

Action filed in Texas state court by approximately 300 property owners in Texas and Louisiana against river authorities in both of those states and operators of hydroelectric generators at dam for property damage arising from flooding on both sides of river that constituted boundary between those states did not fall within exception to federal jurisdiction over "mass action" under Class Action Fairness Act (CAFA) when "all of the claims" arose from event in the state in which the action was filed, and that allegedly resulted in injuries in that state or in contiguous states, and thus **removal** was warranted; all of the claims did not arise in Texas, as flooding occurred in both Texas and Louisiana, many of the plaintiffs owned flooded property in Louisiana, and those plaintiffs' claims arose from flooding that occurred on Louisiana side of river. Bonin v. Sabine River Authority of Louisiana, C.A.5 (Tex.) 2020, 961 F.3d 381. **Removal** of Cases 2

State court action against 25 financial institutions alleging rescission, fraudulent concealment, intentional and negligent misrepresentation, invasion of privacy, and violation of California statutes satisfied Class Action Fairness Act (CAFA) numerosity requirement where at time of **removal** initial complaint named 137 plaintiffs; to be **removable** "mass action," state-court action had to involve claims of 100 or more persons, and while initial complaint involved only 95 properties, statement that only one claim existed per property was inaccurate. Visendi v. Bank of America, N.A., C.A.9 (Cal.) 2013, 733 F.3d 863. **Removal** of Cases 2

Under Class Action Fairness Act (CAFA), the determination of whether a mass action is properly **removable** to **federal court** is separate from the determination of whether the action may go forward as a group. Abraham v. American Home Mortg. Servicing, Inc., E.D.N.Y.2013, 947 F.Supp.2d 222. **Removal** of Cases 2

---- Penal actions, civil actions within section, civil actions brought in state courts

Municipal waste ordinance scheme expressly created civil penalties, not quasi-criminal or criminal penalties, for purposes of general diversity jurisdiction under federal **removal** statute; although behavior to which penalty applied was a crime, penalty provision of ordinance explicitly provided "civil penalties," monetary assessments did not constitute an affirmative disability or restraint, monetary penalties were not exclusively criminal, ordinance did not require scienter, deterrence could serve civil goals, ordinance could have purpose of creating resources to clean up waste and protect public health, and civil penalties were not so disproportionate to purposes of ordinance so as to be viewed as penal in nature. City of Neodesha v. BP Corporation North America Inc, D.Kan.2016, 176 F.Supp.3d 1233, motion to certify overruled 2016 WL 3522092. Statutes 1072; Statutes 1111

Although zoning violations were contained in "summons and complaints," where it was clear that action was being prosecuted by county with view to vindicating public right by obtaining judgment imposing prescribed penalty for violating county ordinances by conducting slaughterhouse operation on lands zoned for agricultural uses, the action was essentially penal in nature and should be remanded to county court. Racine County v. Deligiannis, E.D.Wis.1974, 380 F.Supp. 1406. **Removal** Of Cases 4

Even if **removed** state action, in which stockholders sought to enforce their rights under Illinois Business Corporation Act, S.H.A.Ill. ch. 32, § 157.45, to inspect and copy corporation's records and in which they sought recovery of statutory ten percent penalty for alleged unlawful and unreasonable refusal to permit appropriate inspection, had not been brought as an action for writ of mandamus, remand to state court was required where major thrust and issue of action pertained to penalty. Tasner v. U.S. Industries, Inc., N.D.Ill.1974, 379 F.Supp. 803. **Removal** Of Cases 11

Penal actions are not **removable**. Nowell v. Nowell, D.C.Conn.1967, 272 F.Supp. 298. **Removal** Of Cases 4

---- Probate actions, civil actions within section, civil actions brought in state courts

Probate exception to federal jurisdiction did not bar **removal** based on diversity jurisdiction of petition filed in California probate court by co-administrators of deceased songwriter's estate, seeking order regarding status of royalty payments held by company that collected songwriter's music royalties; the dispute concerned whether contract between musician and company that held the royalty payments was valid, and whether the contract was effectively terminated, so that the action was merely related to the probate proceeding and would not require the **federal court** to probate a will or administer an estate, and royalties sought by administrators were in possession of the company, not the probate court. In re Kendricks, C.D.Cal.2008, 572 F.Supp.2d 1194. **Removal** Of Cases 11

Petition filed in California probate court by co-administrators of deceased songwriter's estate, seeking order regarding status of royalty payments held by company that collected songwriter's music royalties, was "civil action," within meaning of federal **removal** statute; it initiated a proceeding in state court that was adversarial in nature and similar in many respects to an ordinary civil lawsuit. In re Kendricks, C.D.Cal.2008, 572 F.Supp.2d 1194. **Removal** Of Cases 4

In a state probate proceeding, an initial pleading or petition to bring an action commences a civil action that can be **removed** to **federal court**. In re Kendricks, C.D.Cal.2008, 572 F.Supp.2d 1194. **Removal** Of Cases 4

---- Small claims, civil actions within section, civil actions brought in state courts

Small claims writ and notice of suit served by insured upon his health insurer, seeking recovery due to insurer's alleged failure to timely process claims, was not filed or otherwise "brought" in any state court, thereby precluding **removal**. Marciniszyn v. Cigna Corp., D.Conn.2014, 59 F.Supp.3d 459. **Removal** of Cases 4

Notices of **removal** of state court small claims cases brought by natural persons should not be automatically filed whenever **removal** is authorized by statute, but rather filed sparingly, where settlement has been unsuccessfully attempted or claim appears to lack any merit, and assistance of **federal** **court** in dealing with matter is considered important. Barbieri v. Hartsdale Post Office, S.D.N.Y.1994, 856 F.Supp. 817. **Removal** Of Cases 9

---- Subpoena duces tecum proceedings, civil actions within section, civil actions brought in state courts

Statute providing for the **removal** of certain "civil actions" commenced in state courts if the district courts of the United States have original jurisdiction did not authorize **removal** of state court subpoenas compelling an agent of the Federal Bureau of Investigation (FBI) to testify in a criminal case and a state court order compelling the agent to testify and both the agent and an Assistant United States Attorney (AUSA) to produce information; there had been no civil complaint filed against the agent or the AUSA, nor were they parties to the underlying criminal action. F.B.I. v. Superior Court of Cal., N.D.Cal.2007, 507 F.Supp.2d 1082. **Removal** Of Cases 11

Proceeding by president of Senate of Puerto Rico seeking to compel the Governor to produce documents required in Senate investigation of police misconduct was "civil action" within meaning of this section even though it commenced on ex parte basis where the action eventually required confrontation between the parties and that confrontation involved adjudication of their respective rights. Agosto v. Barcelo, D.C.Puerto Rico 1984, 594 F.Supp. 1390, mandamus granted 748 F.2d 1. **Removal** Of Cases 4

---- Workers compensation proceedings, civil actions within section, civil actions brought in state courts

Supplementary workers' compensation proceeding in Maine superior court in which claimant sought enforcement of award of the Maine Workers' Compensation Commission did not independently qualify as a **removable** "civil action" under **removal** statute. Armistead v. C & M Transport, Inc., C.A.1 (Me.) 1995, 49 F.3d 43. **Removal** Of Cases 5

Proceeding commenced in state court for compensation under 1953 Comp. § 59-10-1 et seq. had all of the elements of a transitory judicial proceeding and was a "civil action" within purview of this section notwithstanding procedural provisions of 1953 Comp. §§ 59-10-13, 59-10-15, 59-10-16 relative to venue, and provisions for expediting trial of actions thereunder, conducting trial in a summary manner and exempting claimant from certain fees, and costs in trial court and on appeal. Fresquez v. Farnsworth & Chambers Company, C.A.10 (N.M.) 1956, 238 F.2d 709. **Removal** Of Cases 4

---- Miscellaneous actions, civil actions within section, civil actions brought in state courts

Letters and advisory opinions issued by General Counsel of Department of Health and Human Services declaring that federal Public Readiness and Emergency Preparedness (PREP) Act completely preempted all claims under state law related to COVID-19 pandemic did not have force of federal law that prohibited judicial review of any action by Secretary of Health and Human Services, and thus suit against private nursing home by administrator of nursing home resident's estate arising out of resident's death from coronavirus, under Illinois Nursing Home Care Act, was not preempted by PREP Act, and therefore did not present questions of federal law, as statutory ground for **removal**; General Counsel was not Secretary, opinion was not issued after notice and comment rulemaking or in course of administrative adjudication, and while letters and opinion might be binding on Secretary's subordinates, they were not binding on federal judiciary. Martin v. Petersen Health Operations, LLC, C.A.7 (Ill.) 2022, 37 F.4th 1210. Health 107; **Removal** of Cases 19(1); States 18.15

Grable doctrine, under which federal jurisdiction may still exist over state court petition that pleads only state law causes of action, did not entitle oil and gas company to **removal** of state court action brought against it by plaintiff, alleging breach of oral contract to compensate him for assistance in raising funds for project, despite contention that action raised federal issue, as alleged contract at issue was void under federal securities law; action alleged only state court causes of action, and company's

claim of contract illegality was affirmative defense under governing state law. Box v. PetroTel, Incorporated, C.A.5 (Tex.) 2022, 33 F.4th 195. **Removal** of Cases 25(1)

Defendant corporations, that had operations in fossil fuel industry, did not demonstrate "but for" causation between State of Delaware's action alleging state-law claims, including negligent failure to warn and trespass under Delaware law, and corporations' operations on the Outer Continental Shelf (OCS), precluding **removal** to **federal court** based on federal question jurisdiction under the OCSLA, in action arising from corporations purportedly misleading public by misrepresenting impacts of climate change and its link to fossil fuels; State's claims were rooted in the alleged misinformation campaign, not the fossil fuel production itself, and defendants merely contended that their production contributed in some way to the alleged injuries. Delaware v. BP America Inc., D.Del.2022, 2022 WL 58484. **Removal** of Cases 19(5)

Seller's state-law claims against customer would fall within district court's supplemental jurisdiction, and thus general statutory **removal** provision applied, rather than provision specifically governing **removal** of actions involving a mix of federal claims and state-law claims that were outside court's supplemental jurisdiction, and consent of all defendants therefore was required for **removal** of seller's state-court action against customer and parcel-delivery company; seller's state-law claims against customer and any federal-question claims against company would both arise from company's delivery of gold necklace to customer after customer had already received full refund from seller. Gold Town Corp. v. United Parcel Service, Inc., S.D.N.Y.2021, 2021 WL 355057. **Removal** of Cases 82

Longshoreman who was injured aboard a vessel when he was electrocuted upon touching a crane did not waive argument on motion to remand personal injury suit, that savings-to-suitors clause of maritime jurisdiction statute, providing that state-law claims could not be **removed** to **federal court** solely on basis of maritime jurisdiction, precluded **removal** of the action, by failing to raise argument within 30 days of **removal**, where longshoreman filed motion to remand within 30 days of notice of **removal**, and motion to remand asserted that **removal** was defective. Ibarra v. Port of Houston Authority of Harris County, S.D.Tex.2021, 526 F.Supp.3d 202. **Removal** of Cases 107(1)

Employee's retaliatory discharge claim against employer was not civil action arising under Iowa state workers' compensation laws, and thus action was properly **removed** to federal district court based upon diversity of parties; wrongful discharge claim was judicially-recognized tort for violation of Iowa public policy, and Iowa legislature omitted wrongful discharge claim from workers' compensation statutory scheme. Campbell v. Kraft Heinz Food Company, S.D.Iowa 2020, 465 F.Supp.3d 918. **Removal** of Cases 3

Because civil action brought in office of District Justice in Pennsylvania, seeking severance pay and payments for unused vacation days, personal days, and sick days, was brought in "state court" under federal **removal** statute, defendant should have **removed** action within 30 days of its receipt of complaint or other pleading from office of District Justice; plaintiff brought suit in office of District Justice, defendant appeared and raised various federal issues, District Justice entered judgment for defendant, and plaintiff appealed to state Court of Common Pleas, filing complaint in that court as required by Pennsylvania rules, whereupon defendant **removed** action to **federal court**. McDowell v. Wetterau, Inc., W.D.Pa.1995, 910 F.Supp. 236. **Removal** Of Cases 79(1)

Order to show cause should not have been **removed** to federal district court, as unless prior special proceeding against union to compel it to provide former employee with protection and procedures of collective bargaining unit and to allow her to file grievance for wrongful discharge, which had been dismissed for insufficiency of process, insufficiency of service of process, and failure to state cause of action, was somehow revived and converted into action at law, there was no action pending in state court which was **removable** to **federal court**. Bradigan v. Office and Professional Employees Intern. Union, Local 153, AFL-CIO, N.D.N.Y.1995, 879 F.Supp. 7. **Removal** Of Cases 15

Where an action seeks only injunctive relief against an unfair labor practice, it is not **removable** from state court, in absence of diversity of citizenship or jurisdictional amount. Douglas v. International Broth. of Elec. Workers Union, W.D.Mich.1955, 136 F.Supp. 68. **Removal** Of Cases 19(5)

Jury trial, civil actions brought in state courts

Florida plaintiff's action in Puerto Rico state court to enforce judgment against Puerto Rico defendants was not subject to **removal**, even though jury trial requested by defendants was not available in Puerto Rico courts. M.D. Moody & Sons, Inc. v. Dockside Marine Contractors, Inc., D.Puerto Rico 2007, 549 F.Supp.2d 143. **Removal** Of Cases 18

Ancillary actions, civil actions brought in state courts--Generally

Judgment creditor's supplementary proceeding in Florida state court to void judgment debtor's allegedly fraudulent conveyances to transferees was not ancillary proceeding but "civil action" subject to **removal** to federal district court; transferees were new parties in supplementary proceeding that had never been sued in tort action that produced judgment, and creditor in supplementary proceeding sought to impose new liability based on new substantive legal theory of fraudulent conveyance, which involved transfers that were factually distinct from negligence at issue in action against debtor. Jackson-Platts v. General Elec. Capital Corp., C.A.11 (Fla.) 2013, 727 F.3d 1127. **Removal** of Cases 4; **Removal** of Cases 5

Under general **removal** statute, civil action, to be **removable**, must not be ancillary, incidental, or auxiliary to a another suit in state court. Ohio v. Doe, C.A.6 (Ohio) 2006, 433 F.3d 502. **Removal** Of Cases 5

Under this section only independent suits are **removable**. Federal Sav. & Loan Ins. Corp. v. Quinn, C.A.7 (Ill.) 1969, 419 F.2d 1014. **Removal** Of Cases 5

Judgment creditor's post-judgment special proceeding under New York law for the enforcement of money remedies against judgment debtors and debt advisory company, who debtors had allegedly transferred assets to, was ancillary to the judgment the creditor obtained in state court, not an independent action, and thus was improperly **removed** from state court. High Speed Capital, LLC v. Corporate Debt Advisors, LLC, W.D.N.Y.2018, 339 F.Supp.3d 137. **Removal** of Cases 5

Under Florida law, judgment creditor could bring supplemental proceeding only in court that entered judgment, and thus defendants impleaded in supplemental proceeding could not **remove** proceeding to **federal court**, notwithstanding presence of both jurisdictional amount and complete diversity of citizenship; supplemental proceeding required impleaded parties to account for their role in divesting judgment debtor of assets prior to final judgment, and was inseparable adjunct of state court action. Estate of Jackson v. Ventas Realty, Ltd. Partnership, M.D.Fla.2011, 812 F.Supp.2d 1306. Creditors' Remedies 952; **Removal** Of Cases 5

Term "civil action," as used in this section, does not embrace proceedings that are supplementary or incidental to another action. Overman v. Overman, E.D.Tenn.1976, 412 F.Supp. 411. **Removal** Of Cases 5

In determining whether cause of action sought to be **removed** is ancillary to state proceeding and therefore nonremovable, state court determinations of ancillariness are not conclusive. International Organization Masters, Mates and Pilots of America, Local No. 2 v. International Organization Masters, Mates & Pilots of America, Inc., E.D.Pa.1972, 342 F.Supp. 212. **Removal** Of Cases 48.1

Under this section only independent suits are **removable** from state court to the **federal court**, and a proceeding which is substantially a part of, incident to, or a continuation of prior action is supplementary, not independent, and hence not **removable**. Eisenhardt v. Coastal Industries, Inc., M.D.Pa.1971, 324 F.Supp. 550. **Removal** Of Cases 48.1

Proceedings which are ancillary to an action pending in a state court cannot be **removed**. Nowell v. Nowell, D.C.Conn.1967, 272 F.Supp. 298. **Removal** Of Cases 5

If proceeding on settlement was part of or ancillary to original action, it was unremovable standing by itself. Ackert v. Ausman, S.D.N.Y.1963, 217 F.Supp. 934. **Removal** Of Cases 48

---- Enforcement of judgment actions, ancillary actions, civil actions brought in state courts

When all that remains of an action is the enforcement of a judgment, **removal** to **federal court** is not authorized. Ohio v. Doe, C.A.6 (Ohio) 2006, 433 F.3d 502. **Removal** Of Cases 15

Proceedings involving filing of a Florida state court judgment in a Maryland state court pursuant to the Uniform Enforcement of Foreign Judgments Act could be **removed** to **federal court**, despite claim that Maryland state court proceedings were merely ancillary to Florida action and could not be **removed** because the **removal** deadline for the Florida action had long since passed. Weiner v. Blue Cross of Maryland, Inc., D.Md.1990, 730 F.Supp. 674, affirmed 925 F.2d 81, certiorari denied 112 S.Ct. 69, 502 U.S. 816, 116 L.Ed.2d 43. **Removal** Of Cases 5; **Removal** Of Cases 79(1)

---- Setting aside judgments, ancillary actions, civil actions brought in state courts

Federal court has authority to set aside a judgment rendered by a state court before **removal** of the action. Robert E. Diehl, Inc. v. Morrison, M.D.Pa.1984, 590 F.Supp. 1190. **Removal** Of Cases 114

---- Garnishment actions, ancillary actions, civil actions brought in state courts

Garnishment proceeding brought against insurer for amount of judgment obtained against insured was a "civil action" within meaning of this section providing that any civil action which is brought in state court and of which district courts have original jurisdiction may be **removed** and was not an action auxiliary to main state action and, in view of fact that diversity of citizenship and jurisdictional amount were established, case was properly **removed** to federal district court which acquired jurisdiction. Randolph v. Employers Mut. Liability Ins. Co. of Wis., C.A.8 (Mo.) 1958, 260 F.2d 461, certiorari denied 79 S.Ct. 585, 359 U.S. 909, 3 L.Ed.2d 573. **Removal** Of Cases 5

A garnishment proceeding is a "civil action" which may be **removed** to **federal court**. Stoll v. Hawkeye Cas. Co. of Des Moines, Iowa, C.A.8 (S.D.) 1950, 185 F.2d 96. **Removal** Of Cases 4

Judgment creditor's filing of writs of garnishment in state court against judgment debtors' insurer were civil actions separate from, not ancillary to, action against judgment debtors, and thus insurer was entitled to **remove** actions on writs of garnishment to **federal court**; writs of garnishment were filed in aid of execution of judgment, but judgment creditor's claims against insurer were wholly distinct from claims on which she prevailed in action against judgment debtors, specifically, insurer was entitled to adversarial testing of its liability to judgment creditor under insurance policy. Garcia v. Century Surety Company, D.Colo.2014, 71 F.Supp.3d 1184. **Removal** of Cases 5

Where garnishment procedures allow for adversarial litigation of disputed issues and where garnishment action involves a new party and disputes rights and issues not decided by state court, **removal** should be permitted on the ground that garnishment claim is separate and distinct from underlying claim. Harding Hosp. v. Sovchen, S.D.Ind.1994, 868 F.Supp. 1074. **Removal** Of Cases 5

Garnishment proceeding was a "distinct civil action" independent of underlying wrongful death action such that it could be **removed** by garnishee under statute providing that any civil action brought in state court of which district courts have original jurisdiction may be **removed** to district court for district and division embracing place where action is pending. Smotherman v. Caswell, D.Kan.1990, 755 F.Supp. 346. **Removal** Of Cases 49.1(1)

Injured party's garnishment claim against automobile driver's insurer for bad-faith failure to settle claim was **removable** civil action under **removal** statute, separate and distinct from underlying negligence action against driver. Bridges for Bridges v. Bentley by Bentley, D.Kan.1989, 716 F.Supp. 1389. **Removal** Of Cases 5; **Removal** Of Cases 49.1(1)

Garnishment actions in which garnishees had interests and defenses separate from interests and defenses of judgment creditors, and in which diversity and jurisdictional amount were present, were **removable** even though state court regarded the garnishment actions as ancillary to main suit. Stewart v. EGNEP (Pty) Ltd., C.D.Ill.1983, 581 F.Supp. 788. **Removal** Of Cases 5

A garnishment proceeding in the state of Tennessee should not be treated as an independent "civil action" for purposes of this section; it is an ancillary proceeding because it must be based upon a valid, unsatisfied judgment and execution. Overman v. Overman, E.D.Tenn.1976, 412 F.Supp. 411. **Removal** Of Cases 5

Under this section, an Ohio garnishment proceeding is an independent "civil action" and is **removable** by the garnishee. Dr. Macht, Podore & Associates, Inc. v. Girton, S.D.Ohio 1975, 392 F.Supp. 66. **Removal** Of Cases 5

Bringing of action, civil actions brought in state courts--Generally

Because Supreme Court's reversal of Court of Appeals decision that claims in **removed** case were precluded by Securities Litigation Uniform Standards Act (SLUSA) had effect of reversing district court's subsequent order which executed Court of Appeals' mandate by dismissing claims, orders filed in state court after remand did not commence new action for **removal** purposes. Disher v. Citigroup Global Markets, Inc., S.D.Ill.2007, 487 F.Supp.2d 1009. **Federal Courts** 3218; **Removal** Of Cases 110

Congress intended the word "brought" to mean no more than its usual connotation of "commence" when it provided for **removal** of cases "brought" in a state court. Haun v. Retail Credit Co., W.D.Pa.1976, 420 F.Supp. 859. **Removal** Of Cases 13

Under this section, a case is not ripe for **removal** unless it has been "brought" and is "pending" in state court, and a proceeding cannot actually have been "brought" when court in which it is supposed to be "pending" has never been mentioned in or out of record by either of parties or anyone else, but after a party has gone to court, realism presents no such difficulty. Minkoff v. Budget Dress Corp., S.D.N.Y.1960, 180 F.Supp. 818. **Removal** Of Cases 79(1)

---- Court intervention, bringing of action, civil actions brought in state courts

Arbitration proceeding is brought in a state court, within meaning of this section providing for **removal** of civil actions brought in a state court, when the state court is first asked to participate in the proceeding, either by motion to compel or to stay arbitration or by a motion to confirm or vacate the award, and until one of these steps is taken, or the court is in some other manner requested to intervene, proceeding is not **removable**. Minkoff v. Scranton Frocks, Inc., S.D.N.Y.1959, 172 F.Supp. 870. **Removal** Of Cases 3

---- Notice of arbitration, bringing of action, civil actions brought in state courts

Union's notice of arbitration was not suit "brought" in state court within meaning of this section, and therefore, employer could not effect **removal** of suit to federal district court by filing petition for order staying the arbitration proceedings. Children's

Dress, Infant's Wear, Housedress and Bathrobe Makers' Union, Local 91, ILGWU v. Frankow Mfg. Co., S.D.N.Y.1960, 183 F.Supp. 671. **Removal** Of Cases 3

---- Property subject to judicial restraint, bringing of action, civil actions brought in state courts

Civil action is considered "brought" in state court for purposes of general **removal** statute when, among other things, party's personal property is subjected to judicial restraint. Cowart Iron Works, Inc. v. Phillips Const. Co., Inc., S.D.Ga.1981, 507 F.Supp. 740. **Removal** Of Cases 15

State courts within section, civil actions brought in state courts--Generally

Statute authorizing **removal** of actions "brought in a State court" refers specifically and only to state court, and this language is to be interpreted strictly and not applied by analogy to all nonfederal trial courts. DeCoteau v. Sentry Ins. Co., D.N.D.1996, 915 F.Supp. 155. **Removal** Of Cases 9

Statute authorizing **removal** of actions "brought in a State court" refers specifically and only to state court, and this language is to be interpreted strictly and not applied by analogy to all nonfederal trial courts. Gourneau v. Love, D.N.D.1994, 915 F.Supp. 150. **Removal** Of Cases 9

Use of phrase "state court" has uniform meaning for all **removal** provisions as "state court" and "state" is defined for purposes of chapter. Weso v. Menominee Indian School Dist., E.D.Wis.1995, 915 F.Supp. 73. **Removal** Of Cases 9

---- Considerations governing, state courts within section, civil actions brought in state courts

For purposes of **removal** of action from state court, title given a state tribunal was not determinative; it is necessary to evaluate functions, powers, and procedures of state tribunal and consider those factors along with respective state and federal interest in subject matter and in provision of a forum. Floeter v. C. W. Transport, Inc., C.A.7 (Wis.) 1979, 597 F.2d 1100. **Removal** Of Cases 4

Relevant factors in determining whether a state board is a "court" for **removal** purposes include the board's procedures and enforcement powers, the locus of traditional jurisdiction over the subject matter, and respective state and federal interests in the subject matter and in the provision of a forum. Volkswagen de Puerto Rico, Inc. v. Puerto Rico Labor Relations Bd., C.A.1 (Puerto Rico) 1972, 454 F.2d 38. **Removal** Of Cases 4

Federal interest in upholding federalism weighed in favor of finding that Maine Motor Vehicle Franchise Board was not acting as a "State court," for purposes of determining whether **removal** of franchisee's case against franchisor under Maine's Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act before the Board was improper; allowing **removal** would essentially gut portions of Act that allowed either party to bring a case under the Act before the Board, since any out-of-state manufacturer facing such a claim could simply **remove** the case and evade the Board entirely. Darling's v. Chrysler Group, LLC, D.Me.2014, 57 F.Supp.3d 68. **Removal** of Cases 9

District Justice's court or office in Pennsylvania is "state court" within meaning of federal **removal** statute; it is part of unitary court system of Commonwealth of Pennsylvania, District Justice is subject to supervisory authority of Pennsylvania Supreme Court, District Justice in question had jurisdiction to award damages in assumpsit up to certain amount, and he did not lack attributes of court such as disinterestedness, separation from executive and learnedness in law. McDowell v. Wetterau, Inc., W.D.Pa.1995, 910 F.Supp. 236. **Removal** Of Cases 9

The question of whether a proceeding may be regarded as an action in a state court within the meaning of this section is determined by reference to the procedure and functions of the state tribunal rather than the name by which the tribunal is designated. Tool and Die Makers Lodge No. 78 Intern Ass'n of Machinists AFL-CIO v. General Elec. Co. X-Ray Dept., E.D.Wis.1959, 170 F.Supp. 945. **Removal** Of Cases 4

---- Guam Island court, state courts within section, civil actions brought in state courts

Nonresident sued in Guam Island Court could **remove** case to District Court of Guam. Jones & Guerrero Co., Inc. v. Sealift Pac., C.A.9 (Guam) 1977, 554 F.2d 984. Territories 37(4)

---- Administrative agencies generally, state courts within section, civil actions brought in state courts

Administrative agency without attributes of court should not be considered state court under federal **removal** statute. Sun Buick, Inc. v. Saab Cars USA, Inc., C.A.3 (Pa.) 1994, 26 F.3d 1259. **Removal** Of Cases 9

Proceeding before Wisconsin Division of Hearings and Appeals (DHA), alleging that vehicle manufacturer violated provision of state law prohibiting manufacturers from modifying motor vehicle dealer agreements without proper notice, had procedures substantially similar to those traditionally associated with judicial process, so as to permit **removal** to **federal court**; although state law required complainants to cross-file complaints with Wisconsin Department of Transportation (DOT), which was not similar to a court, DHA was only body charged with hearing disputes, and DHA hearing process featured many functions, powers, and procedures typical of courts, such as right to take and preserve evidence through depositions and written interrogatories, issue subpoenas to compel attendance of witnesses or production of evidence, put on evidence at hearings, and conduct cross-examinations. Don Johnson's Haywood Motors, Inc. v. General Motors LLC, W.D.Wis.2019, 387 F.Supp.3d 939. **Removal** of Cases 4

Connecticut's Department of Insurance was not a "state court" within meaning of the general **removal** statute or the federal officer **removal** statute, and thus administrative proceedings initiated by the state's Insurance Commissioner against insurance salesperson for revocation or suspension of his license as insurance producer, based on alleged violations of state law in selling Medicare-adjacent policies, could not be **removed** to **federal court**. Wade v. Burns, D.Conn.2019, 361 F.Supp.3d 306, affirmed 2020 WL 629968. **Removal** of Cases 9

Massachusetts Securities Division where administrative enforcement action was pending was not functionally equivalent to state "court," for **removal** purposes, given that the Securities Division, while possessing many court-like powers, did not conduct proceedings between third parties, and given that Securities Division was not considered judicial under state law. Enforcement Section of Massachusetts Securities Division of Office of Secretary of Commonwealth v. Scottrade, Inc., D.Mass.2018, 327 F.Supp.3d 345. Labor And Employment 407; States 18.51

Federal interest in out-of-state car dealership franchisor's right to neutral federal forum for dispute under Maine's Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act weighed in favor of finding that Maine Motor Vehicle Franchise Board was not acting as a "State court," for purposes of determining whether **removal** of franchisee's case against franchisor before the Board was improper; franchisor could add claim challenging Board's decision in its federal action against franchisee, and franchisee's claim involved no federal question within ambit of statute permitting Supreme Court to review judgments by State's highest court, and thus *Rooker-Feldman* doctrine had no logical application. Darling's v. Chrysler Group, LLC, D.Me.2014, 57 F.Supp.3d 68. Courts 509.3(1); **Removal** of Cases 9

Maryland Health Claims Alternative Dispute Resolution Office (HCADRO) was "State court," for purposes of federal officer **removal** statute, and thus patient's administrative medical malpractice claim against federally-employed physicians was **removable** from HCADRO to federal district court, even though HCADRO was executive-branch administrative agency, parties

were permitted to unilaterally waive arbitration and to reject arbitration award, HCADRO could not enforce its own subpoenas, and its determinations were given effect through confirmation proceedings that had to be conducted by court; HCADRO operated in adjudicatory manner, and interests served by federal officer **removal** statute outweighed Maryland's interests in providing state administrative forum. Wilson v. Gottlieb, D.Md.2011, 821 F.Supp.2d 778. **Removal** of Cases 9; **Removal** of Cases 21

This section and §§ 1446 and 1447 of this title relating to **removal** of cases to **federal** **court** apply only to **removal** from state courts and not from administrative bodies. California Packing Corp. v. I.L.W.U. Local 142, D.C.Hawai'i 1966, 253 F.Supp. 597. **Removal** Of Cases 4

---- Labor and employment boards, state courts within section, civil actions brought in state courts

The Oregon Bureau of Labor and Industries (BOLI) was not a "state court," within the meaning of the **removal** jurisdiction statute, precluding **removal** to the district court of employment discrimination action that was pending before BOLI; BOLI was administrative agency that conducted court-like adjudications. Oregon Bureau of Labor and Industries ex rel. Richardson v. U.S. West Communications, Inc., C.A.9 (Or.) 2002, 288 F.3d 414. **Removal** Of Cases 3

In disputes alleging breaches of collective bargaining agreements and unfair representation, Wisconsin Employment Relations Commission is a "state court" for purposes of **removal**. Floeter v. C. W. Transport, Inc., C.A.7 (Wis.) 1979, 597 F.2d 1100. **Removal** Of Cases 4

Considering, inter alia, Board's lack of rule-making power and its adjudicative format with respect to alleged breaches of collective bargaining agreement, that, on the other hand, it lacks enforcement powers, that the proceeding is inter partes, and that the substantive law is purely federal, the Puerto Rico Labor Relations Board in conducting unfair labor practice proceedings for breach of collective bargaining agreements acts as a "court" and thus such proceedings are **removable** to federal district court. Volkswagen de Puerto Rico, Inc. v. Puerto Rico Labor Relations Bd., C.A.1 (Puerto Rico) 1972, 454 F.2d 38. **Removal** Of Cases 4

Proceedings before Wisconsin Employment Relations Board on unions' complaints that collective bargaining agreements were violated by employer by unilateral changing of seniority of one employee adversely affecting other employees and failure to pay proper vacation pay and violation of seniority rights and dissolution of a department and failure to place a floor inspector on a particular job and changing incentive rates, constituted such judicial proceedings as could be **removed** to federal district court, notwithstanding that under the Wisconsin practice it is the Board which hears the evidence and declares the facts and the law and it is the state court which enforces the Board's rulings. Tool and Die Makers Lodge No. 78 Intern. Ass'n of Machinists AFL-CIO v. General Elec. Co. X-Ray Dept., E.D.Wis.1959, 170 F.Supp. 945. Labor And Employment 1676(4); **Removal** Of Cases 4

---- Motor vehicle boards, state courts within section, civil actions brought in state courts

Pennsylvania Board of Vehicles was not "court" under federal **removal** statute, even if an administrative agency could qualify as court under that statute, given that Board did not perform functions like court and, thus, dispute concerning manufacturer's termination of dealer franchise could not be **removed** to district court; Board administered and enforced Board of Vehicles Act, could not award damages, could assess only limited fines, and lacked characteristics such as disinterestedness, separation from executive, and learnedness in the law. Sun Buick, Inc. v. Saab Cars USA, Inc., C.A.3 (Pa.) 1994, 26 F.3d 1259. **Removal** Of Cases 9

Wisconsin's interest in regulating relationships between motor vehicle manufacturers and dealers under state law outweighed any countervailing federal interest, and thus, dealers' administrative complaint before the Wisconsin Division of Hearings and

Appeals (DHA), alleging that vehicle manufacturer violated provision of state law prohibiting manufacturers from modifying motor vehicle dealer agreements without proper notice, was not **removable** to **federal court**; complaint implicated strong state interest in licensing and regulating motor vehicle dealerships, deciding the dispute required application of specific public policy considerations enumerated by the state legislature, and state law required dealers to prevail at DHA before seeking damages in court proceedings. Don Johnson's Haywood Motors, Inc. v. General Motors LLC, W.D.Wis.2019, 387 F.Supp.3d 939. **Removal** of Cases 4

Maine's interest in how Maine's Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act applied to car dealership franchisee servicing Maine consumers and in the forum weighed in favor of finding that Maine Motor Vehicle Franchise Board was not acting as a "State court," for purposes of determining whether **removal** of franchisee's case against franchisor before the Board was improper; Maine had strong interest in application of its own laws to events that occurred within its borders, dispute only involved state substantive law, and legislative history revealed policy judgment that disputes would be resolved more fairly and efficiently by having facts judged by businesspeople and members of the public experienced in that area. Darling's v. Chrysler Group, LLC, D.Me.2014, 57 F.Supp.3d 68. **Removal** of Cases 9

Maryland Department of Transportation, Motor Vehicle Administration (MVA), while it employed many of the same procedures as a court, was not the functional equivalent of a court, and thus, a dispute before it between a motorcycle manufacturer and dealer could not be **removed** to **federal court**; like other state licensing agencies, the MVA merely employed adjudicatory procedures in limited circumstances relating to its duties as licensor, and moreover, the state's strong interest in enforcing its vehicle-distribution licensing scheme dwarfed any federal interest in the provision of a forum. Rockville Harley-Davidson v. Harley-Davidson Motor Co., D.Md.2002, 217 F.Supp.2d 673. **Removal** Of Cases 9

Pennsylvania State Board of Vehicle Manufacturers, Dealers and Salespersons could be considered state "court" for purposes of **removal** jurisdiction in retailer's case against manufacturer alleging wrongful termination of automobile franchise; procedures that Board employed to resolve dispute were akin to judicial proceedings, dispute was type commonly referred to courts and resolution of dispute would not implicate matters peculiarly within expertise of state. Corwin Jeep Sales & Service, Inc. v. American Motors Sales Corp., M.D.Pa.1986, 670 F.Supp. 591. **Removal** Of Cases 9

---- Utilities commissions, state courts within section, civil actions brought in state courts

State Public Utilities Commission (PUC) was not a "state court," and therefore borough's petition with the PUC seeking declaratory judgment on matters concerning service provided by electric utility could not be **removed** to **federal court**. Borough of Olyphant v. Pennsylvania Power & Light Co., M.D.Pa.2003, 269 F.Supp.2d 601. **Removal** Of Cases 9

---- Miscellaneous agencies, state courts within section, civil actions brought in state courts

Oklahoma county board of commissioners was not "state court," within plain language of **removal** jurisdiction statute, and thus county waste management district did not have objectively reasonable basis for seeking **removal** of landowner's petition to de-annex their land from district that was pending before county board, even though board exercised judicial function in de-annexation proceedings; board was an administrative rather than judicial entity. Porter Trust v. Rural Water Sewer and Solid Waste Management Dist. No. 1, C.A.10 (Okla.) 2010, 607 F.3d 1251. **Removal** Of Cases 9

Maryland Insurance Administration (MIA) was not a "state court" within meaning of **removal** statute, and thus administrative proceeding conducted under MIA's authority to decide insureds' state-law misrepresentation claim against insurer was not **removable** on diversity grounds; although it utilized many court-like procedures, MIA was not functional equivalent of court since it lacked traditional judicial powers such as enforcement of subpoenas and enforcement of remedies, and moreover state's strong interest in enforcing its insurance licensing and regulatory scheme, under which insureds asserted their complaint,

predominated over slight federal interest in providing forum to diverse parties. Gottlieb v. Lincoln Nat'l. Life Ins. Co., D.Md.2005, 388 F.Supp.2d 574. **Removal** Of Cases 9

Where Minnesota Railroad and Warehouse Commission had dismissed a complaint seeking an order establishing a site for public warehouse on railroad right of way, and complainant appealed to state district court, and railroad petitioned for **removal** of cause to **federal court**, complainant's motion to remand to state district court would not be granted on theory that denial of motion would place **federal court** in anomalous position of reviewing order of state administrative body, since railroad was not seeking judicial review and railroad could not be deprived of statutory authority to invoke jurisdiction of **federal court** in diversity of citizenship case. Range Oil Supply Co. v. Chicago, R. I. & P. R. Co., D.C.Minn.1956, 140 F.Supp. 283. **Removal** Of Cases 102

Tribal courts, civil actions brought in state courts

Tribal court is not a "state court" for purposes of statute permitting **removal** of civil actions brought in state court of which federal district courts have original jurisdiction. DeCoteau v. Sentry Ins. Co., D.N.D.1996, 915 F.Supp. 155. **Removal** Of Cases 9

Tribal court is not "state court" within meaning of statute entitling defendants to **remove** any civil action brought in state court of which district courts of United States have original jurisdiction; thus, **removal** from tribal court is improper. White Tail v. Prudential Ins. Co. of America, D.N.D.1995, 915 F.Supp. 153. **Removal** Of Cases 1

Tribal court is not a "state court" for purposes of statute permitting **removal** of civil actions brought in state court of which federal district courts have original jurisdiction. Gourneau v. Love, D.N.D.1994, 915 F.Supp. 150. **Removal** Of Cases 9

Action filed in Menominee Tribal Court by teacher, who alleged that school district violated Indian Self-Determination and Educational Assistance Act (ISDEAA) by failing to grant her unqualified preference in hiring, could not be **removed** to district court as language of **removal** statute limiting **removal** to actions commenced in "state court" did not extend to action originally commenced in tribal court. Weso v. Menominee Indian School Dist., E.D.Wis.1995, 915 F.Supp. 73. **Removal** Of Cases 9

FEDERAL QUESTION GENERALLY

Federal question generally

If a suit by a state presents a federal question, it is **removable** upon that ground. State of Arkansas v. Kansas & T. Coal Co., U.S.Ark.1901, 22 S.Ct. 47, 183 U.S. 185, 46 L.Ed. 144. See, also, Southern Pac. R. Co. v. California, Cal.1886, 6 S.Ct. 993, 118 U.S. 109, 30 L.Ed. 103; Ames v. Kansas, Kan.1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 482; Illinois v. Illinois Cent. R. Co., C.C.Ill.1888, 33 F. 721; Baltimore & O.R. Co. v. Board of Public Works of West Virginia, D.C.W.Va.1936, 17 F.Supp. 170; Texas v. Texas, etc., R. Co., C.C.Tex.1879, 3 Woods 308, 23 Fed.Cas. No. 13,848.

Defendant may **remove** state law claim to **federal court** when **federal court** would have had original jurisdiction if suit originally had been filed there. Clark v. Ameritas Investment Corp., D.Neb.2005, 408 F.Supp.2d 819, report and recommendation adopted 2006 WL 1401727. **Removal** Of Cases 11

For suit to be one that arises under federal law, so as to confer **removal** jurisdiction on **federal courts**, it must appear on face of complaint that resolution of case depends upon federal question. Chronologic Simulation, Inc. v. Sanguinetti, D.Mass.1995, 892 F.Supp. 318. **Removal** Of Cases 25(1)

Prerequisites to finding that **removal** to federal district court is proper are: federal law must be essential element of plaintiff's cause of action; federal question must arise from well pleaded complaint and not from answer or petition for **removal**; federal

question may not be inferred from defense; and federal question must be substantial. Nelson v. United Artist Theater Circuit, Inc., E.D.Pa.1993, 835 F.Supp. 844. **Removal** Of Cases 19(1); **Removal** Of Cases 25(1)

In absence of complete diversity, defendant can **remove** state court complaint to **federal court** if complaint contains federal question over which federal district court would have original jurisdiction. Zandi-Dulabi v. Pacific Retirement Plans Inc., N.D.Cal.1993, 828 F.Supp. 760. **Removal** Of Cases 25(1)

Where federal substantive law is found to be controlling, either by reason of the exclusive jurisdiction of the **federal courts**, or federal preemption, the suit is properly **removable**. Rettig v. Arlington Heights Federal Sav. and Loan Ass'n, N.D.Ill.1975, 405 F.Supp. 819. **Removal** Of Cases 19(1)

Arising under federal law, federal question generally--Generally

Federal **removal** statute permits **removal** of case that contains only claims that "arise under" federal law. Wisconsin Dept. of Corrections v. Schacht, U.S.Wis.1998, 118 S.Ct. 2047, 524 U.S. 381, 141 L.Ed.2d 364, on remand 175 F.3d 497. **Removal** Of Cases 19(1)

For case to arise "under the Constitution or laws of the United States," right of immunity created by Constitution or laws of United States must be essential element of plaintiff's cause of action, and right or immunity must be supported if laws of United States are given one construction or effect, and defeated if they receive another, and genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto, and controversy must be disclosed on face of complaint, unaided by answer or by petition for **removal**. Gully v. First Nat. Bank, U.S.Miss.1936, 57 S.Ct. 96, 299 U.S. 109, 81 L.Ed. 70. See, also, In re Winn, Iowa 1909, 29 S.Ct. 515, 213 U.S. 458, 53 L.Ed. 873; Andersen v. Bingham & G. Ry. Co., C.C.A. 10 (Utah) 1948, 169 F.2d 328; Nelson v. Leighton, D.C.N.Y.1949, 82 F.Supp. 661; Com. of Mass. v. McHugh, D.C.Mass.1947, 71 F.Supp. 516; Downey v. Geary-Wright Tobacco Co., D.C.Ky.1941, 39 F.Supp. 33; State of Ga. v. Southern Ry. Co., D.C.1938, 25 F.Supp. 630. **Federal Courts** 2321; **Removal** Of Cases 25(1)

The "arising under" gateway into **federal court** has two distinct portals, in that, first, it admits litigants whose causes of action are created by federal law, that is, where federal law provides a right to relief, and, second, in certain cases federal question jurisdiction will lie over state-law claims that implicate significant federal issues. Eastman v. Marine Mechanical Corp., C.A.6 (Ohio) 2006, 438 F.3d 544, certiorari denied 127 S.Ct. 73, 549 U.S. 815, 166 L.Ed.2d 26. **Federal Courts** 2214; **Federal Courts** 2217

Federal issue will ultimately qualify for a federal forum only if federal jurisdiction is consistent with congressional judgment about the sound division of labor between state and **federal courts** governing the application of the statute providing for federal question jurisdiction; because arising-under jurisdiction to hear a state-law claim always raises the possibility of upsetting the state-federal line drawn, or at least assumed, by Congress, there must always be an assessment of any disruptive portent in exercising federal jurisdiction. Lane v. CBS Broadcasting Inc., E.D.Pa.2009, 612 F.Supp.2d 623, on remand 2009 WL 10472835. **Federal Courts** 2216

To warrant **removal**, the federal controversy must be disclosed on the face of the complaint, unaided by the answer or petition for **removal**. Able Sales Co., Inc. v. Mead Johnson Puerto Rico, Inc., D.Puerto Rico 2006, 420 F.Supp.2d 1. **Removal** Of Cases 25(1)

Removal of action from state to **federal court** is permitted when **federal court** has original jurisdiction over the action because it founded on claim or right arising under federal law. Hamburger v. Desoutter, Inc., E.D.Mich.1995, 886 F.Supp. 616. Removal Of Cases 11

Fact that federal law may govern certain aspects of a case does not mean that the action arises under federal law for purposes of original or removal jurisdiction. National Bank of North America v. Local 553 Pension Fund of Intern. Broth. of Teamsters and Chauffeurs, E.D.N.Y.1978, 463 F.Supp. 636. **Federal Courts** 2213; **Removal** Of Cases 19(1)

To remove an action from state to **federal court** on ground of federal question jurisdiction and regardless of citizenship or residence of the parties, the action must not only be one "arising under" federal law but must be "founded on a claim or right arising under" federal law. Monsanto Co. v. Tennessee Valley Authority, N.D.Ala.1978, 448 F.Supp. 648. Removal Of Cases 19(1)

---- Common law, arising under federal law, federal question generally

For purposes of federal question jurisdiction to support removal of state court action to **federal court**, "laws of the United States" include federal common law. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 19(1)

---- Construction of federal laws, arising under federal law, federal question generally

A case in law or in equity consists of the right of one party as well as the other, and is removable as arising under the Constitution or laws of the United States whenever its correct decision depends on the construction of either or when the title or right set up by the party may be defeated by one construction and sustained by the opposite construction. New Orleans, M. & T.R. Co. v. Mississippi, U.S.Miss.1880, 2 Ky.L.Rptr. 137, 102 U.S. 135, 12 Otto 135, 26 L.Ed. 96. See, also, Tennessee v. Union & Planters' Bank, Tenn.1894, 14 S.Ct. 654, 152 U.S. 454, 38 L.Ed. 511; Germania Ins. Co. v. Wisconsin, Wis.1886, 7 S.Ct. 260, 119 U.S. 473, 30 L.Ed. 461; Andersen v. Bingham & G. Ry. Co., C.A.Utah 1948, 169 F.2d 328; Beck v. Johnson, C.C.Ky.1909, 169 F. 154; Oregon v. Three Sisters Irrigation Co., C.C.Or.1907, 158 F. 346. **Federal Courts** 2321

A cause cannot be **removed** to a **federal court**, on the ground that it is one arising under the Constitution, laws, or treaties of the United States, merely because it may become necessary to construe the Constitution or laws of the United States, but the cause must be one the decision of which depends on such construction. Little York Gold Washing & Water Co. v. Keyes, U.S.Cal.1877, 96 U.S. 199, 6 Otto 199, 24 L.Ed. 656. See, also, Rosecrans v. William S. Lozier, Inc., C.C.A.Mo.1944, 142 F.2d 118; Armstrong v. Alliance Trust Co., C.C.A.Miss.1942, 126 F.2d 164; Shellenbarger v. Fewel, 1912, 124 P. 617, 34 Okl. 79, affirmed 35 S.Ct. 234, 236 U.S. 68, 59 L.Ed. 470; Schuyler v. Southern Pac. Co., 1909, 109 P. 458, 37 Utah 581, rehearing denied 109 P. 1025, 37 Utah 612, affirmed 33 S.Ct. 277, 227 U.S. 601, 57 L.Ed. 662, 43 L.R.A.,N.S., 901; State v. Southern Pac. Co., 1893, 31 P. 960, 23 Or. 424; Galveston, H. & S.A. Ry. Co. v. State, Tex.Civ.App.1896, 36 S.W. 111.

Phrase "arising under" is construed consistently across provisions for district court's original jurisdiction in "all civil actions arising under the Constitution, laws, or treaties of the United States and "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." In re Processed Egg Products Antitrust Litigation, E.D.Pa.2011, 836 F.Supp.2d 290, entered 2011 WL 6396446. **Federal Courts** 2211; **Federal Courts** 2274; **Federal Courts** 2275

Under substantial federal question doctrine, federal jurisdiction may be found, warranting removal, where plaintiff's state-law claim will require **federal court** to decide or construe substantial issue of federal law. Moriconi v. AT & T Wireless PCS, LLC, E.D.Ark.2003, 280 F.Supp.2d 867. Removal Of Cases 19(1)

Federal jurisdiction for state-based claims that involve construction of federal law is allowed, but only if federal element is substantial. Barnhart-Graham Auto, Inc. v. Green Mountain Bank, D.Vt.1992, 786 F.Supp. 394. **Federal Courts** 2217

For action to be **removable** to **federal court** under this section, complaint must on its face show that matter in controversy arises under laws of United States, and that construction and application of those laws are necessary to final and just determination of issue which complaint tenders. Gray v. Oklahoma Land & Cattle Co., N.D.Okla.1965, 240 F.Supp. 646. Removal Of Cases 25(1)

Fact that claim will be supported by one construction of federal Constitution and defeated by another construction does not alone raise such question under federal Constitution as to confer jurisdiction on **federal court** so that action could be removed to such court. Rice v. Sioux City Memorial Park Cemetery, N.D.Iowa 1952, 102 F.Supp. 658. Removal Of Cases 18

---- Essential element, arising under federal law, federal question generally

Former landowner's state law quiet title action against federal tax sale purchaser, alleging that Internal Revenue Service (IRS) had given him inadequate notice of sale, asserted removable federal question; whether former owner received notice was essential element of his claim, meaning of federal notice statute was actually disputed, and its meaning was important federal tax law issue that belonged in **federal court**. Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg., U.S.2005, 125 S.Ct. 2363, 545 U.S. 308, 162 L.Ed.2d 257, rehearing denied 126 S.Ct. 25, 545 U.S. 1158, 162 L.Ed.2d 923. Removal Of Cases 19(10); Removal Of Cases 25(1)

For a civil action to arise under federal question jurisdiction, the right or immunity created by constitution or laws of United States must be an element, and an essential one, of plaintiff's cause of action, and controversy must be disclosed upon face of the complaint, unaided by the answer or by a petition for removal. Westmoreland Hospital Ass'n v. Blue Cross of Western Pennsylvania, C.A.3 (Pa.) 1979, 605 F.2d 119, certiorari denied 100 S.Ct. 1025, 444 U.S. 1077, 62 L.Ed.2d 759. **Federal Courts** 2213; **Federal Courts** 2349; **Federal Courts** 2353

Claimed constitutional or statutory right must be an essential element of plaintiff's cause of action and a genuine and present controversy must exist with reference thereto for case to be removed from state to **federal court**. Crow v. Wyoming Timber Products Co., C.A.10 (Wyo.) 1970, 424 F.2d 93. Removal Of Cases 18; Removal Of Cases 19(1)

State's claims against computer manufacturer and financing company did not depend upon federal law, and any federal claims asserted therein were merely alternate theories for state's New York claims, and thus claims were not **removable** to **federal court** on federal question grounds and required remand to state court, even if the misconduct alleged in certain causes of action was not fully encompassed by state law claims; all of state's claims, including allegation that defendants violated Equal Credit Opportunity Act and Fair Credit Reporting Act (FCRA), were fully actionable under the state's claims under New York Executive Law provision governing the state Attorney General's duties with regard to entities committing fraudulent or illegal acts. New York ex rel. Cuomo v. Dell, Inc., N.D.N.Y.2007, 514 F.Supp.2d 397, on remand 873 N.Y.S.2d 236, 21 Misc.3d 1110(A). Removal Of Cases 25(1); Removal Of Cases 102

In determining whether claim "arises under" stated source of federal law, for purposes of determining existence of federal question jurisdiction, right or immunity created by one of those sources must be essential element of plaintiff's cause of action and it must be apparent from face of well-pleaded complaint, unaided by answer or notice of removal, that there exists federal question. Thomas v. Burlington Industries, Inc., S.D.Fla.1991, 763 F.Supp. 1570. **Federal Courts** 2213; **Federal Courts** 2350; **Removal** Of Cases 25(1)

In order to establish presence of federal question jurisdiction for removal of state action to **federal court**, federally created right which is said to be present in complaint must be essential element of plaintiff's cause of action; action does not "arise under" federal law unless it really and substantially involves dispute or controversy reflecting validity, construction, or effect of such law, upon determination of which result depends. La Freniere v. General Elec. Co., N.D.N.Y.1983, 572 F.Supp. 857. Removal Of Cases 19(1)

It was not sufficient to merely allege that federal statute was involved in action in order to maintain federal jurisdiction and removal of case to **federal court**, but it was necessary, in addition, that complaint assert claim founded directly upon federal law and that such claim was essential to plaintiff's cause of action. Diaz v. Swiss Chalet, D.C.Puerto Rico 1981, 525 F.Supp. 247. Removal Of Cases 25(1)

In order for action brought in state court to be **removed** to **federal court** on ground the action arose under the Constitution, treaties or laws of the United States, the right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. Columbia Pictures Corp. v. Towne Theatre Corp., E.D.Wis.1968, 282 F.Supp. 467. Removal Of Cases 18; Removal Of Cases 19(1)

---- Incorporation by reference, arising under federal law, federal question generally

County's claim that city violated Ohio law in its operation of dam, by failing to obtain permit for diversion of water, did not arise under federal Water Resources Development Act of 1986, as would confer removal jurisdiction, though Ohio incorporated requirements of federal act by reference. Portage County Bd. of Com'rs v. City of Akron, N.D.Ohio 1998, 12 F.Supp.2d 693, appeal after remand from **federal court** 808 N.E.2d 444, 156 Ohio App.3d 657, 2004-Ohio-1665, appeal allowed 814 N.E.2d 869, 103 Ohio St.3d 1442, 2004-Ohio-4626, affirmed in part, reversed in part 846 N.E.2d 478, 109 Ohio St.3d 106, 2006-Ohio-954, reconsideration denied 846 N.E.2d 535, 109 Ohio St.3d 1427, 2006-Ohio-1967. Removal Of Cases 19(1)

---- Inference and speculation, arising under federal law, federal question generally

Claim alleged to be federal need not be labeled as such to fall within the federal jurisdiction; however, courts are resistant to finding federal claim by implication. F.W. Myers & Co., Inc. v. World Projects Intern., Inc., N.D.N.Y.1995, 903 F.Supp. 353. **Federal Courts** 2349

Removal based on existence of federal question must allege all facts essential to existence of that federal question; which cannot be left to mere speculation. Bryant v. Blue Cross and Blue Shield of Alabama, N.D.Ala.1990, 751 F.Supp. 968. Removal Of Cases 25(1)

---- Well-pleaded complaint, arising under federal law, federal question generally

Not every federal question presented in case means that case “arises under” federal law for purposes of original jurisdiction, but rather, only when plaintiff's complaint clearly establishes that claim is one necessarily arising under federal law will federal issue suffice to support **removal** to **federal court**. Powers v. South Central United Food & Commercial Workers Unions and Employers Health & Welfare Trust, C.A.5 (Tex.) 1983, 719 F.2d 760. Removal Of Cases 25(1)

Since a defendant may remove a case only if the claim could have been brought in **federal court** the question for removal jurisdiction must also be determined by reference to the well-pleaded complaint; if, however, a plaintiff chooses not to present a federal claim, even though one is potentially available, the defendant may not remove the case from state to **federal court**. Goffney v. Bank of America, N.A., S.D.Tex.2012, 897 F.Supp.2d 520. Removal of Cases 25(1)

Federal courts may hear only those removed cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law. Shadie v. Aventis Pasteur, Inc., M.D.Pa.2003, 254 F.Supp.2d 509. Removal Of Cases 25(1)

In determining whether action was founded on a claim or right arising under laws of the United States, so as to authorize removal from state to **federal court**, **federal court** can consider only those facts which are alleged in petition in state court, unaided

by any answer or by petition for removal. Northern Natural Gas Co. v. Cities Service Oil Co., S.D.Iowa 1959, 182 F.Supp. 155. Removal Of Cases 25(1)

---- Miscellaneous cases, arising under federal law, federal question generally

Terminated employee's state court complaint, asserting cause of action under Ohio law for retaliatory employment discharge in violation of public policy, and identifying, as sources of public policy, federal statute punishing act of knowingly presenting false claims to United States, and federal statute creating civil penalties against persons who present false claims to government, did not raise substantial federal question over which **federal courts** could exercise original or removal jurisdiction, where Congress provided no private right of action under such statutes, statutes' meaning was not in serious dispute, it could not be disputed that submitting false claims to government violated national policy, and division of labor between federal and state courts would be upset by converting state public policy claim into federal action. Eastman v. Marine Mechanical Corp., C.A.6 (Ohio) 2006, 438 F.3d 544, certiorari denied 127 S.Ct. 73, 549 U.S. 815, 166 L.Ed.2d 26. **Federal Courts** 2264(1); **Removal** Of Cases 11; Removal Of Cases 19(5)

Under Puerto Rico law, when the question before the Supreme Court of Puerto Rico refers to the validity of a Puerto Rico law under a clause of the constitution of the Commonwealth of Puerto Rico that is similar to a clause in the federal Constitution, the issue is a mixed question of federal and state rights that must be resolved by the **federal court**, because the validity of the statute under the federal Constitution necessarily disposes of the question under state law. Rossello-Gonzalez v. Calderon-Serra, C.A.1 (Puerto Rico) 2005, 398 F.3d 1. **Federal Courts** 3106

Landowners' allegations that hazardous waste disposal facility was maintained in violation of federal regulations as well as in violation of state and local regulations did not render action one "arising under" federal law, as would warrant removal on federal question grounds. MSOF Corp. v. Exxon Corp., C.A.5 (La.) 2002, 295 F.3d 485, certiorari denied 123 S.Ct. 623, 537 U.S. 1046, 154 L.Ed.2d 519, appeal after remand from **federal court** 934 So.2d 708, 2004-0988 (La.App. 1 Cir. 12/22/05), rehearing denied, writ denied 938 So.2d 78, 2006-1669 (La. 10/6/06), on remand 2008 WL 2625184. Removal Of Cases 25(1)

State court order directing defendant to show cause why its counsel and escrow agent holding funds subject to judgment secured by plaintiff in breach of contract action should not be held in contempt did not fall within scope of district court's federal question jurisdiction, and thus **removal** to **federal court** was not proper, despite defendant's contention that show-cause order infringed upon counsel's First Amendment right to zealously advocate on his client's behalf. Amcat Global, Inc. v. Yonaty, N.D.N.Y.2016, 192 F.Supp.3d 308. **Federal Courts** 2217

Federal issues raised by patient's state law negligence per se claim against manufacturer of spinal fusion device, namely, whether manufacturer designed, manufactured, and promoted an unreasonably dangerous product in violation of the FDCA, were not substantial, as required to support removal under substantial federal question jurisdiction; while the issues were important to the individual litigants, they were not significant to the federal system as a whole. Carmine v. Poffenbarger, E.D.Va.2015, 154 F.Supp.3d 309. **Federal Courts** 2213

Cardiologists' and medical center's complaint against cardiologists' former employer did not necessarily raise federal issue, as would support removal of action to **federal court**; although complaint referred to federal law, gravamen of complaint was that former employer violated Nevada's Unfair Trade Practices Act (UTPA) by engaging in, and conspiring to engage in, monopolistic behavior, and claims could be decided independently of any federal question. St. Mary's Regional Medical Center v. Renown Health, D.Nev.2014, 35 F.Supp.3d 1275. Removal of Cases 25(1)

Employee's removed action alleging that her employer violated Florida's Whistle-Blower Act (FWA) was not capable of resolution in the **federal courts** without disrupting federal-state balance, as would support removal of the action as arising under federal law relating to patents, where any defendant in an FWA case could remove simply by referencing a federal issue

involved, and Florida state courts had traditionally adjudicated such cases. Bonnafant v. Chico's FAS, Inc., M.D.Fla.2014, 17 F.Supp.3d 1196. Removal of Cases 19(6)

Patient's complaint against bone graft device manufacturer alleging negligence, products liability, and fraud did not present substantial federal question, and thus was not **removable** to **federal court** on that basis, even though manufacturer claimed that patient's state law claims were preempted by federal law, and complaint stated that manufacturer illegally promoted "off-label" use of device and failed to exercise reasonable care by not complying with applicable federal law and regulations, where patient did not allege that manufacturer breached state duties by violating federal standards, and remainder of patient's claims did not depend on federal law. Dillon v. Medtronic, Inc., E.D.Ky.2014, 992 F.Supp.2d 751. Removal of Cases 25(1)

Lender's non-diverse state-court action against borrower and borrower's guarantors, seeking to enforce commercial promissory note that was secured in part by first preferred mortgage on boat, was not removable on basis of statute conferring **federal-court** jurisdiction over claims brought to enforce preferred mortgage liens on vessels; complaint did not mention mortgage or raise other issues of federal law and did not incorporate mortgage by reference, lender had elected not to foreclose upon mortgage, and federal jurisdiction conferred by statute was not exclusive. Sovereign Bank v. Bowditch Boat Holdings, LLC, D.Mass.2005, 376 F.Supp.2d 3. Removal Of Cases 25(1)

Shipper's claim in state court against motor carrier, whose alleged negligence during interstate shipment resulted in damage to shipper's cargo, for a refund of tariff charges presented a federal question, as would warrant **removal** to **federal court**, where claim was exclusively governed by federal law, and resolution of claim required interpretation of interstate bill of lading. Coughlin v. United Van Lines, LLC, C.D.Cal.2005, 362 F.Supp.2d 1170. Removal Of Cases 19(5)

Complaint filed by New York Attorney General alleging that New York Stock Exchange (NYSE) violated New York's Not-for-Profit Corporation Law by paying its former chairman and chief executive officer (CEO) compensation that was not reasonable and commensurate with services performed was not founded on federal right, and thus was not **removable** to **federal court** on that basis, despite chairman's contention that claims of conflict of interest constituted thinly-disguised attempt to charge him with abusing NYSE's federal regulatory powers, where claims were all founded directly and explicitly on state law, wrongdoing alleged by complaint was not violation of federal law, claims did not depend in any way on interpretation or analysis of federal law, and existence, not source, of chairman's power was all that was necessary to ground allegation of conflict of interest. New York v. Grasso, S.D.N.Y.2004, 350 F.Supp.2d 498. Removal Of Cases 21; Removal Of Cases 25(1)

Claims against various vaccine manufacturers and child's healthcare providers alleging strict products liability, breach of warranty, negligence, consumer fraud, and battery due to neurological injuries allegedly resulting from vaccine injections did not raise substantial federal issues under the National Childhood Vaccine Injury Act, and thus did not support federal question jurisdiction; while there were federal issues to be addressed, they were not of such a substantial nature as to establish federal question jurisdiction. Bertrand v. Aventis Pasteur Laboratories, Inc., D.Ariz.2002, 226 F.Supp.2d 1206. **Federal Courts** 2286

Removal of arrestee's case against police officers to **federal court** was proper even though arrestee did not allege in explicit terms a deprivation of rights under the Constitution or federal law, where arrestee, in essence, alleged that two police officers, acting under color of state law, used excessive force against him and falsely arrested him, and both such acts are violations of the Fourth Amendment and § 1983, and arrestee sought various kinds of damages, including punitive damages and attorney fees, which were not recoverable under Louisiana law but were recoverable under federal law. Hall v. City of Alexandria, W.D.La.2000, 111 F.Supp.2d 785. Removal Of Cases 25(1)

Claims brought by original plaintiff, federal question generally--Generally

In order for cases to be **removed** to **federal court**, defendant had to demonstrate that plaintiff's claim, seeking to foreclose mortgages, was within diversity jurisdiction or was one arising under the Constitution, treaties or laws of the United States;

a defense or counterclaim raising a federal question would not be sufficient. Federal Land Bank of Columbia v. Cotton, N.D.Ga.1975, 410 F.Supp. 169. Removal Of Cases 19(1); Removal Of Cases 25(1); Removal Of Cases 26; Removal Of Cases 47

---- Counterclaims, claims brought by original plaintiff, federal question generally

Defendants' § 1983 counterclaim could not be considered in determining whether **federal court** had **removal** jurisdiction over action seeking protective order, where defendants did not assert counterclaim until after case had been **removed** to **federal court**. In re Whatley, D.Mass.2005, 396 F.Supp.2d 50. Removal Of Cases 15

District courts are of limited jurisdiction; if a case is removed improvidently and without jurisdiction under this section, no jurisdiction is obtained by filing of counterclaim even though it states a federal claim. Nolan v. Otis Elevator Co., D.C.N.J.1982, 560 F.Supp. 119, on remand 484 A.2d 49, 197 N.J.Super. 70. **Federal Courts** 2015; **Removal** Of Cases 118

Defenses based on federal law, federal question generally--Generally

Case may not be **removed** to **federal court** on basis of federal defense that defendant might raise to defeat plaintiff's claim. Burda v. M. Ecker Co., C.A.7 (Ill.) 1992, 954 F.2d 434, on remand. Removal Of Cases 25(1)

Presence of substantial federal question must be apparent without aid of answer or petition for removal in order for federal question jurisdiction to exist; **federal court** cannot take jurisdiction of case as one arising under federal law if federal issue will be raised only as defense to state law claim. Chuska Energy Co. v. Mobil Exploration & Producing North America, Inc., C.A.5 (Tex.) 1988, 854 F.2d 727, rehearing denied. **Federal Courts** 2352

Defendant cannot remove a state law claim from state to **federal court** even if his defense is based entirely on federal law. Hunter v. United Van Lines, C.A.9 (Cal.) 1984, 746 F.2d 635, certiorari denied 106 S.Ct. 180, 474 U.S. 863, 88 L.Ed.2d 150, rehearing denied 106 S.Ct. 547, 474 U.S. 1014, 88 L.Ed.2d 476. Removal Of Cases 11

Certainty that federal law will enter a case by way of defense does not confer jurisdiction upon district courts to remove case from state to **federal courts** under this chapter. Debevoise v. Rutland Ry. Corp., C.A.2 (Vt.) 1961, 291 F.2d 379, certiorari denied 82 S.Ct. 123, 368 U.S. 876, 7 L.Ed.2d 77. Removal Of Cases 25(1)

Even if valid federal defense exists, case cannot be removed unless there exists either federal question or diversity jurisdiction on face of original complaint. Ulysse v. AAR Aircraft Component Services, E.D.N.Y.2012, 841 F.Supp.2d 659, appeal after remand from **federal court** 10 N.Y.S.3d 309, 128 A.D.3d 1053. Removal of Cases 25(1)

Removal may not be premised on the basis of a federal defense, underscoring the principle that the plaintiff is the master of the claim and may avoid litigation in **federal court** by asserting claims only arising under state law. Horizon Blue Cross Blue Shield of New Jersey v. East Brunswick Surgery Center, D.N.J.2009, 623 F.Supp.2d 568. Removal Of Cases 25(1)

Federal court will not have removal jurisdiction if federal law or preemption is merely a defense to state-law claims, even if the defense of federal law or preemption is the only issue at stake. Firefighters' Retirement System v. Regions Bank, M.D.La.2008, 598 F.Supp.2d 785. Removal Of Cases 25(1)

Injection of federal questions in defense or counterclaim does not necessarily create requisite federal ground for **removal** to **federal court**. Commercial Sav. Bank v. Commercial Federal Bank, N.D.Iowa 1996, 939 F.Supp. 674. Removal Of Cases 25(1)

For purposes of removal of state court action to **federal court**, defendant may not usurp control of plaintiff's case simply by asserting federal defense. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 25(1)

A defense that raises a federal question is insufficient to confer federal jurisdiction. Isaacs v. Group Health, Inc., S.D.N.Y.1987, 668 F.Supp. 306. **Federal Courts** 2352

Fact that federal statute may be defense to state claim does not make that claim cognizable in **federal court**. Sanchez v. Trustees of Pension Plan, Health and Welfare Plan, and Ed. Fund of United Ass'n of Journeymen and Carpenters of Plumbing and Pipefitting Industry of U.S. and Canada, Local Union 198, AFL-CIO, M.D.La.1976, 419 F.Supp. 909. **Federal Courts** 2352

A defendant sued in a state court upon a claim or right arising under the Constitution or laws of the United States may remove the action to **federal court**, but a defense based on federal law will not sustain removal jurisdiction. State of N.Y. v. Local 1115 Joint Bd., Nursing Home and Hosp. Employees Div., E.D.N.Y.1976, 412 F.Supp. 720. Removal Of Cases 19(1); Removal Of Cases 25(1)

Certainty that federal law will enter a case by way of defense does not confer jurisdiction upon district courts to remove cases from state to **federal courts** under this section. Spring City Flying Service, Inc. v. Vogel, E.D.Wis.1968, 281 F.Supp. 594. Removal Of Cases 25(1)

---- Anticipated defenses, defenses based on federal law, federal question generally

Case may not be **removed** to **federal court** on basis of federal defense, even if defense is anticipated in plaintiff's complaint, and even if both parties admit that defense is the only question truly at issue in case. Rivet v. Regions Bank of Louisiana, U.S.La.1998, 118 S.Ct. 921, 522 U.S. 470, 139 L.Ed.2d 912, on remand 139 F.3d 512. Removal Of Cases 25(1)

Federal question upon which plaintiff relies for original federal jurisdiction, or defendant for removal jurisdiction, must not have entered case by way of defense, and complaint itself will not avail as basis of jurisdiction insofar as it goes beyond statement of plaintiff's cause of action and anticipates or replies to probable defense. First Nat. Bank of Aberdeen v. Aberdeen Nat. Bank, C.A.8 (S.D.) 1980, 627 F.2d 843. **Federal Courts** 2352; **Removal** Of Cases 25(1)

Complaint in suit which has been **removed** to **federal court** must, in and of itself, disclose the existence of a case arising under the Constitution or laws of the United States; it is not sufficient that the complaint anticipates that federal question will be raised in the answer nor is it enough that the petition for removal declares that it is a federal question. State of Okl. ex rel. Wilson v. Blankenship, C.A.10 (Okla.) 1971, 447 F.2d 687, certiorari denied 92 S.Ct. 942, 405 U.S. 918, 30 L.Ed.2d 787. Removal Of Cases 25(1)

A state court action cannot be **removed** to **federal court** based upon a federal defense even if the defense is anticipated in plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case. West Virginia ex rel. McGraw v. Fast Auto Loans, Inc., N.D.W.Va.2013, 918 F.Supp.2d 551, on remand 2014 WL 2623958. Removal of Cases 25(1)

A case may not be **removed** to **federal court** on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue. Sullivan v. Novartis Pharmaceuticals Corp., D.N.J.2009, 602 F.Supp.2d 527. Removal Of Cases 25(1)

Defendant may not remove a case to **federal court** on the basis of a federal claim that plaintiff could have asserted or on the basis of a federal defense that defendant might assert. City of Sachse, Texas v. Kansas City Southern, E.D.Tex.2008, 564 F.Supp.2d 649, reconsideration denied 2008 WL 2704671. Removal Of Cases 25(1)

Case may not be **removed** to **federal court** on basis of federal defense even if defense is anticipated in plaintiff's complaint, and even if both parties concede that federal defense is only question truly at issue. Bowers v. J & M Discount Towing, LLC., D.N.M.2006, 472 F.Supp.2d 1248. Removal Of Cases 25(1)

Under well-pleaded complaint rule, cases brought in state court may not be **removed** to **federal court** based on federal question jurisdiction even if a federal defense, such as preemption, is anticipated in plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue. In re Universal Service Fund Telephone Billing Practices Litigation, D.Kan.2002, 247 F.Supp.2d 1215. Removal Of Cases 25(1)

Case is not **removable** to **federal court** on basis of federal defense, including defense of preemption, even if defense is anticipated in plaintiff's complaint and both parties concede that federal defense is only question at issue. County of Delaware v. Government Systems, Inc., E.D.Pa.2002, 230 F.Supp.2d 592. Removal Of Cases 25(1)

Case may not be **removed** to **federal court** on basis of federal defense, including defense of preemption, even if defense is anticipated in plaintiff's complaint, and even if both parties concede that federal defense is only question truly at issue. Anderson v. Household Finance Corp. of Alabama, M.D.Ala.1995, 900 F.Supp. 386. Removal Of Cases 25(1)

District court may not preside over case if defense raises sole federal question posed, even if plaintiff anticipated defense and both parties concede that federal question is only real issue in case; this is true even if defense is that state claim is preempted by federal law. State Oil Co. v. Khan, N.D.Ill.1993, 839 F.Supp. 543. **Federal Courts** 2352

Case may not be **removed** to **federal court** on basis of federal defense, including defense of preemption, even if defense is anticipated in plaintiff's complaint, and even if both parties concede that federal defense is the only question truly at issue. Bahr v. National Ass'n of Securities Dealers, Inc., S.D.Fla.1991, 763 F.Supp. 584. See, also, Thomas v. Burlington Industries, Inc., S.D.Fla.1991, 763 F.Supp. 1570. Removal Of Cases 25(1)

---- Constitutionality, defenses based on federal law, federal question generally

Where the only federal question in litigation is defendant's federal constitutional defense, unrelated to laws protecting racial equality, defendant cannot remove the action to **federal court** either under § 1443 of this title or this section. Henry v. First Nat. Bank of Clarksdale, C.A.5 (Miss.) 1979, 595 F.2d 291, rehearing denied 601 F.2d 586, certiorari denied 100 S.Ct. 1020, 444 U.S. 1074, 62 L.Ed.2d 756. Removal Of Cases 19(1); Removal Of Cases 70

---- Sovereign immunity, defenses based on federal law, federal question generally

Presence in an otherwise removable case of an Eleventh Amendment-barred claim does not destroy removal jurisdiction that would otherwise exist, and although federal district court cannot hear barred claim, court may proceed to hear nonbarred claims; abrogating *Frances J. v. Wright*, 19 F.3d 337; *McKay v. Boyd Constr. Co.*, 769 F.2d 1084. Wisconsin Dept. of Corrections v. Schacht, U.S.Wis.1998, 118 S.Ct. 2047, 524 U.S. 381, 141 L.Ed.2d 364, on remand 175 F.3d 497. **Federal Courts** 2393; **Removal** Of Cases 23; Removal Of Cases 95

Fact that foreign sovereign admitted **federal court's** jurisdiction in its notice of removal did not waive sovereign immunity; allegation of federal jurisdiction was required in notice of removal and whether foreign sovereign was entitled to sovereign immunity was federal question for which **federal court** was preferred forum. Rodriguez v. Transnave Inc., C.A.5 (Tex.) 1993, 8 F.3d 284. International Law 466

State university did not waive its Eleventh Amendment immunity as agency of state, thus barring federal district court's adjudication of student athletes' removed state law claims; university did not invoke **federal court's** jurisdiction, as it did not **remove** case to **federal court**, nor did it join in or consent to removal, but rather, it was co-defendant collegiate athletic association that unilaterally removed case as it was entitled to do under Class Action Fairness Act (CAFA), and fact that university assisted co-defendant in federal litigation did not mean it invoked federal jurisdiction since there was nothing requiring university to resist such assistance in order to retain its Eleventh Amendment immunity. McCants v. National Collegiate Athletic Association, M.D.N.C.2017, 251 F.Supp.3d 952. **Federal Courts** 2375(5); **Federal Courts** 2388(3); **Removal** of Cases 95

Removal of medical negligence action by board of regents of state university and its components, including hospital behavioral health programs and psychiatric center, and county detention center waived their Eleventh Amendment immunity. Williams v. Board of Regents of University of New Mexico, D.N.M.2014, 990 F.Supp.2d 1121. **Federal Courts** 2375(5); **Removal** Of Cases 95

State's removal of state environmental police officers' (EPOs) action alleging violations of the Fair Labor Standards Act (FLSA) filed in state court did not waive state's Eleventh Amendment sovereign immunity; state was entitled to assert immunity had case originally been filed in **federal court**, or if proceedings remained in state court. Bergemann v. Rhode Island, D.R.I.2009, 676 F.Supp.2d 1, affirmed 665 F.3d 336. **Federal Courts** 2375(5); **Removal** Of Cases 95

---- Preemption, defenses based on federal law, federal question generally

Under the statute affording **federal courts** discretion to remand all otherwise nonremovable matters in which state law predominates, the question of predominance is informed by the precept that pre-emption, the practical manifestation of the Supremacy Clause, is always a federal question. Casey v. F.D.I.C., C.A.8 (Mo.) 2009, 583 F.3d 586, certiorari denied 130 S.Ct. 2062, 559 U.S. 1037, 176 L.Ed.2d 414. Removal Of Cases 101.1

A case may not be **removed** to **federal court** on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue. Abada v. Charles Schwab & Co., Inc., C.A.9 (Cal.) 2002, 300 F.3d 1112. Removal Of Cases 25(1)

Mere fact that ERISA preemption may be raised as defense, or is in actuality a defense, does not confer jurisdiction on **federal court** or authorize **removal**. Toumajian v. Frailey, C.A.9 (Cal.) 1998, 135 F.3d 648, appeal after remand from **federal court** 2002 WL 31112559, unpublished. **Federal Courts** 2352; **Removal** Of Cases 25(1)

Removal and preemption are distinct concepts, and fact that plaintiffs' claim might ultimately prove to be preempted does not establish that it is **removable** to **federal court**; in nonremovable case, federal preemption defense would be decided in state court and would be subject to review on certiorari in United States Supreme Court. Strong v. Telectronics Pacing Systems, Inc., C.A.6 (Mich.) 1996, 78 F.3d 256, rehearing and suggestion for rehearing en banc denied. Removal Of Cases 25(1)

Asserted or anticipated defense predicated on federal preemption of state law is, in jurisdictional terms, defense like any other, and will not serve to invoke federal jurisdiction. Powers v. South Central United Food & Commercial Workers Unions and Employers Health & Welfare Trust, C.A.5 (Tex.) 1983, 719 F.2d 760. **Federal Courts** 2352

Action by surviving son of resident of residential health care facility under Kansas law asserting wrongful death, survival and lost chance of recovery, and negligence did not allege direct, causal connection between resident's injuries in contracting and dying from COVID-19 and health care facility's decisions to administer to another person countermeasures covered under Public Readiness and Emergency Preparedness Act (PREP Act), placing action outside scope of PREP Act's remedial right, and thus action was not completely preempted and could not be **removed** to **federal court** under complete preemption exception to well-pleaded complaint rule, where complaint alleged neither that facility limited countermeasures nor failed to administer

countermeasures in order to administer them to another. Pirotte v. HCP Prairie Village KS OPCO LLC, D.Kan.2022, 2022 WL 179444. Health 607; Removal of Cases 25(1); States 18.15

As defense, federal preemption does not appear on face of well-pleaded complaint and does not qualify as "joining of claims" by original plaintiff; therefore, federal preemption defense does not authorize **removal** to **federal court**. Waymire v. Leonard, S.D.Ohio 2010, 724 F.Supp.2d 876. Removal Of Cases 25(1)

Fact that consumer sought punitive damages in her New Jersey Products Liability Act (NJPLA) failure-to-warn suit against drug manufacturer did not raise substantial federal question, so as to permit removal, even though Act permitted punitive damages only in event of showing of fraud on Food and Drug Administration (FDA); although manufacturer could present defense of federal preemption, such defense was insufficient to justify removal, and opening federal forum to claims like consumer's would cause potentially enormous shift of traditionally state cases into **federal courts**. Sullivan v. Novartis Pharmaceuticals Corp., D.N.J.2008, 575 F.Supp.2d 640. Removal Of Cases 25(1)

Because ERISA conflict preemption constitutes defense to cause of action, it does not authorize **removal** to **federal court**. Bloomfield v. MacShane, S.D.N.Y.2007, 522 F.Supp.2d 616. Removal Of Cases 25(1)

Case may not be **removed** to **federal court** on basis of federal defense, including defense of preemption, even if defense is anticipated in plaintiff's complaint, and even if both parties concede that federal defense is the only true question at issue. Arora v. Hartford Life and Annuity Ins. Co., N.D.Cal.2007, 519 F.Supp.2d 1021. Removal Of Cases 25(1)

Federal preemption is ordinarily federal defense to plaintiff's suit, does not appear on face of well-pleaded complaint, and therefore does not authorize **removal** to **federal court**. Hannibal v. Federal Express Corp., E.D.Va.2003, 266 F.Supp.2d 466. Removal Of Cases 25(1)

State law claims preempted by Copyright Act would be deemed as having arisen under federal law, for purposes of determining whether state lawsuit brought on such claims could be **removed** to **federal court**. Firoozye v. Earthlink Network, N.D.Cal.2001, 153 F.Supp.2d 1115. Removal Of Cases 25(1)

"Ordinary preemption," is a federal defense to the plaintiff's suit and may arise either by express statutory term or by a direct conflict between the operation of federal and state law; being a defense it does not appear on the face of a well-pleaded complaint, and thus does not authorize **removal** to a **federal court**. Binion v. Franklin Collection Services, Inc., S.D.Miss.2001, 147 F.Supp.2d 519. Removal Of Cases 25(1)

A case may not be **removed** to **federal court** on basis of a federal defense, including preemption. Evans v. Keystone Consol. Industries, Inc., C.D.Ill.1995, 884 F.Supp. 1209. Removal Of Cases 25(1)

Case may not be **removed** to **federal court** on basis of a federal defense, including defense of preemption. Department of Banking and Finance, State of Fla. v. U.S. Trust Corp., S.D.Fla.1985, 610 F.Supp. 919. Removal Of Cases 25(1)

Even if federal law has clearly preempted state law in substantive area framed by plaintiff's complaint, preemption is only a defense in state court action, and not an independent basis for **removal** to **federal court**. Buice v. Buford Broadcasting, Inc., N.D.Ga.1983, 553 F.Supp. 388. Removal Of Cases 25(1)

Federal preemption does provide proper basis for removal of action to **federal court**. Palm Beach Co. v. Journeymen's and Production Allied Services of America and Canada Intern. Union Local 157, S.D.N.Y.1981, 519 F.Supp. 705. Removal Of Cases 10

Defendant's contentions that federal law had preempted subject matter of complaint, which was based on state law claims, did not provide basis for removal of the case to **federal court**. Johnson v. First Federal Sav. and Loan Ass'n of Detroit, E.D.Mich.1976, 418 F.Supp. 1106. Removal Of Cases 25(1)

Generally, assertion of federal preemption as defense is insufficient to invoke federal question jurisdiction to permit **removal** to **federal court**. Carway v. Progressive County Mut. Ins. Co., S.D.Tex.1995, 183 B.R. 769. Removal Of Cases 25(1)

---- Miscellaneous cases, defenses based on federal law, federal question generally

Federal statute limiting relief available against franchising authority in suits involving regulation of cable service, which was at best a defense to damages sought from municipalities for imposing fee in excess of costs of regulation, did not provide basis for federal question jurisdiction over state law claims, and thus did not support removal of actions. Lindstrom v. City of Des Moines, IA, S.D.Iowa 2007, 470 F.Supp.2d 1002, appeal after remand from **federal court** 784 N.W.2d 200, rehearing denied, appeal after remand from **federal court** 789 N.W.2d 634. Removal Of Cases 25(1)

Accounting firm's potential, if not likely, defense, that it agreed to produce privilege log associated with client's documents in compliance with Internal Revenue Service (IRS) subpoena, to client's breach of contract claim in state court, which was based upon state common law and statutory privileges, did not provide basis for removal on federal question grounds; complaint could have been read as action to prohibit accounting firm from releasing documents voluntarily and complaint did not ask state court to enjoin firm from obeying any **federal court** order. Salman v. Arthur Andersen LLP, D.N.M.2005, 375 F.Supp.2d 1233. Removal Of Cases 25(1)

Complete preemption doctrine, federal question generally--Generally

Complete-preemption doctrine is a limited exception to the well-pleaded-complaint rule and is limited to a handful of federal statutes. Gentek Bldg. Products, Inc. v. Sherwin-Williams Co., C.A.6 (Ohio) 2007, 491 F.3d 320. **Federal Courts** 2218(2)

If federal law completely preempts state law claim and supplants it with federal claim, state law claim may be **removed** to **federal court** even if federal law fails to provide plaintiff with remedies available under state law or federal defense completely bars federal claim. Young v. Anthony's Fish Grottos, Inc., C.A.9 (Cal.) 1987, 830 F.2d 993. Removal Of Cases 25(1)

Any complaint that purports to assert a state law claim within the scope of section of the Labor Management Relations Act (LMRA) governing suits by and against labor organizations, section of Employee Retirement Income Security Act (ERISA) governing civil enforcement, and sections of the National Bank Act governing rate of interest on loans, discounts, and purchases and usurious interest necessarily arises under federal law, and is thus **removable** to **federal court** pursuant to complete preemption doctrine. Minton v. Paducah & Louisville Railway, Inc., W.D.Ky.2019, 423 F.Supp.3d 375. Finance, Banking, and Credit 15(1); Labor and Employment 407; Labor and Employment 968; Removal of Cases 25(1); States 18.19; States 18.51

The "complete preemption doctrine" applies when federal cause of action supplants state law cause of action, and thus converts state claim into federal claim; in such a scenario, putative state claim is so entwined with federal law as to allow removal. Flores-Flores v. Horizon Lines of Puerto Rico, Inc., D.Puerto Rico 2012, 875 F.Supp.2d 90. **Federal Courts** 2218(2); **Removal** Of Cases 25(1); States 18.3

The doctrine of "complete preemption" is an exception to the well-pleaded complaint rule that allows for removal of certain types of cases where the preemptive force of federal law is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim. Griner v. Synovus Bank, N.D.Ga.2011, 818 F.Supp.2d 1338, appeal after remand from **federal court** 739 S.E.2d 504, 321 Ga.App. 359, reconsideration denied, certiorari granted. Removal of Cases 25(1)

Where defendant alleges that federal preemption provides the authority to exercise federal jurisdiction over case, if defendant proves that any claim within plaintiffs' complaint is completely preempted by a federal statute, defendant may remove the entire case to **federal court**, including any alleged state law claims arising from the same core of operative facts. Clark v. Ameritas Investment Corp., D.Neb.2005, 408 F.Supp.2d 819, report and recommendation adopted 2006 WL 1401727. Removal Of Cases 25(1)

State-law claim may be **removed** to **federal court** only when: (1) Congress expressly so provides, or (2) federal statute wholly displaces state cause of action through complete preemption. Moriconi v. AT & T Wireless PCS, LLC, E.D.Ark.2003, 280 F.Supp.2d 867. Removal Of Cases 2; Removal Of Cases 25(1)

"Complete preemption" means that claim pleaded under state law is nevertheless purely creature of federal law, i.e., it is federal claim from its very inception, such that it must be re-characterized as viable federal claim, actionable in **federal court**. Ackerman v. Fortis Benefits Ins. Co., S.D.Ohio 2003, 254 F.Supp.2d 792. **Federal Courts** 2218(2); States 18.3

Under doctrine of complete preemption, when area is completely preempted, any claim within that area arises under federal law and is **removable** to **federal court**, even if complaint itself makes no mention of federal law. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 25(1)

Complete preemption is distinct from artful pleading doctrine, and provides alternatively sufficient basis for removal of state action to **federal court**. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 25(1)

Under "complete preemption doctrine," if federal cause of action completely preempts state cause of action, any complaint that is within scope of federal cause of action necessarily arises under federal law, and similarly, any claim purportedly based on that preempted state claim is considered, from its inception, federal claim, and therefore arises under federal law also. Chertkov v. TPLC, Inc., N.D.Tex.1996, 916 F.Supp. 608. **Federal Courts** 2352; **Removal** Of Cases 25(1)

Pursuant to "complete preemption doctrine," **federal court** will have **removal** jurisdiction, regardless of complaint's contents, where Congress has so completely preempted particular area that any civil complaint raising select group of claims is necessarily federal in character. Broadnax Mills, Inc. v. Blue Cross and Blue Shield of Virginia, E.D.Va.1994, 867 F.Supp. 398. Removal Of Cases 25(1)

"Complete preemption doctrine" permits **federal court** to look at the true nature of plaintiff's complaint in resolving removal issue when plaintiff has attempted to avoid federal cause of action by relying solely on state law in the complaint; complete preemption occurs when the preemptive force of federal statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim. Donald v. Golden 1 Credit Union, E.D.Cal.1993, 839 F.Supp. 1394. Removal Of Cases 25(1)

---- Congressional intent, complete preemption doctrine, federal question generally

Family Smoking Prevention and Tobacco Control Act did not completely preempt state court action filed by state of North Carolina against company that sold e-cigarette devices and e-liquid products, alleging unfair or deceptive acts or omissions in designing packaging, in marketing, and in providing age-verification techniques related to its devices and products, precluding **removal** to **federal court** on basis that **federal court** had jurisdiction under complete preemption doctrine; Act did not indicate intent to displace state law in its entirety, but rather Act preserved state role in regulating tobacco products and in enforcement, and Act's preemption provision was limited to certain subject areas that did not include marketing. North Carolina ex rel. Stein v. Eonsmoke LLC, M.D.N.C.2019, 423 F.Supp.3d 162. Removal of Cases 25(1); States 18.3

State common-law claims, including claims for trespass and nuisance, brought by landowner against airport authority in connection with airplane flights over property did not arise under Airline Deregulation Act (ADA), and thus were not completely preempted for removal purposes; there was no evidence that Congress intended **federal courts** to have exclusive subject matter jurisdiction over preemption defenses to state law claims against air carriers. Denzik v. Regional Airport Authority of Louisville and Jefferson County, W.D.Ky.2005, 361 F.Supp.2d 659. Aviation 322; Aviation 323; Removal Of Cases 25(1); States 18.17

Under the "complete preemption doctrine," once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law claim is considered, from its inception, a federal claim, and therefore arises under federal law; the doctrine applies only where Congress evinces a clear intent to displace all state law causes of action. Shadie v. Aventis Pasteur, Inc., M.D.Pa.2003, 254 F.Supp.2d 509. **Federal Courts** 2218(2); States 18.3

For federal statute to completely preempt state law for purposes of removal jurisdiction, it must include civil enforcement provision that creates federal cause of action that both replaces and protects same interest as preempted state law cause of action, it must provide specific jurisdictional grant to **federal courts** to enforce cause of action, and there must be clear congressional intent to make preempted state claims **removable** to **federal court**. Masters v. Swiftships Freeport, Inc., S.D.Tex.1994, 867 F.Supp. 555. Removal Of Cases 25(1); States 18.3; States 18.11

Under exception to "well-pleaded complaint" rule, if Congress intends that federal statute completely preempt area of state law, any complaint alleging claims in that area of state law is presumed to allege claim arising under federal law and complaint may, thus, be **removed** to **federal court** as one alleging federal cause of action. Crawford v. TRW, Inc., E.D.Mich.1993, 815 F.Supp. 1028. Removal Of Cases 25(1)

For purposes of **removing** case to **federal court**, doctrine of complete preemption applies only if there is affirmative evidence of congressional intent to permit removal despite plaintiff's exclusive reliance on state law and if federal statute creates federal cause of action vindicating same rights that plaintiff has claimed under state law. Medical College of Wisconsin Faculty Physicians and Surgeons v. Pitsch, E.D.Wis.1991, 776 F.Supp. 437. Removal Of Cases 25(1)

---- Preemption as defense, complete preemption doctrine, federal question generally

Case may not be **removed** to **federal court** on basis of federal defense, including defense of pre-emption, even if defense is anticipated in plaintiff's complaint, and even if both parties concede that federal defense is only question truly at issue; however, under "complete pre-emption doctrine," which is corollary to well-pleaded complaint rule, once area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, federal claim, and therefore arises under federal law. Caterpillar Inc. v. Williams, U.S.Cal.1987, 107 S.Ct. 2425, 482 U.S. 386, 96 L.Ed.2d 318. Removal Of Cases 25(1)

When a federal statute wholly displaces a state-law cause of action through complete preemption, the state-law claim can be **removed** to **federal court**. Arditi v. Lighthouse Intern., C.A.2 (N.Y.) 2012, 676 F.3d 294, as amended. Removal of Cases 25(1)

Employee's claim asserting entitlement to a lump-sum payment from the employee benefits plan fell squarely within the scope of ERISA's enforcement provision, and thus, was completely preempted by ERISA, justifying **removal** to **federal court**, because the claim directly sought to recover benefits due to him under the terms of his plan. Negron-Fuentes v. UPS Supply Chain Solutions, C.A.1 (Puerto Rico) 2008, 532 F.3d 1. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

Generally, preemption is simply a federal defense to plaintiff's suit that will not appear on face of plaintiff's well-pleaded complaint and preempted state law claim does not arise under laws of the United States and cannot authorize **removal** to

federal court, except in cases of "super preemption" where Congress so completely preempts a particular area that what would ordinarily be a state claim is converted into a federal claim. Brown v. Connecticut General Life Ins. Co., C.A.11 (Ala.) 1991, 934 F.2d 1193. Removal Of Cases 25(1)

State's action alleging that Medicaid applicant's transfer of funds to pooled trust was fraudulent, thus rendering him ineligible for Medicaid benefits, was not subject to complete preemption, and thus could not be **removed** to **federal court** on basis of federal question jurisdiction, despite trust's contention that transfer complied with federal Medicaid statute; federal Medicaid law delegated management of Medicaid program, and recovery of Medicaid funds, to state, which was required to have laws in place to facilitate that recovery. North Dakota Dept. of Human Services v. Center for Special Needs Trust Admin., Inc., D.N.D.2011, 759 F.Supp.2d 1125. Health 457; Removal Of Cases 25(1); States 18.79

Regardless of whether the complaint purports to raise only state law claims, when a state law is completely preempted by federal law, then the state law claim "arises under" federal law and is **removable** to **federal court**. Davis v. Old Dominion Tobacco Co. Inc., E.D.Va.2010, 688 F.Supp.2d 466. Removal Of Cases 25(1)

Unlike defensive preemption, complete preemption transforms state law claims into federal claims, thereby creating a basis for federal question jurisdiction. Clark v. Ameritas Investment Corp., D.Neb.2005, 408 F.Supp.2d 819, report and recommendation adopted 2006 WL 1401727. **Federal Courts** 2218(2)

"Complete preemption" is jurisdictional in nature, rather than an affirmative defense to a claim under state law; it authorizes **removal** to **federal court** even if the complaint is pleaded to include solely state law claims for relief or if the federal issue is initially raised solely as a defense. Binion v. Franklin Collection Services, Inc., S.D.Miss.2001, 147 F.Supp.2d 519. Removal Of Cases 25(1)

Case may not be **removed** to **federal court** on basis of federal defense, including defense of preemption, even if defense is anticipated in plaintiff's complaint, and even if both parties concede that federal defense is only question truly at issue; however, once area of state law has been completely preempted, any claim purportedly based on that preempted state law is considered federal claim, and thus arises under federal law. Person v. Bell Atlantic-Virginia, Inc., E.D.Va.1998, 993 F.Supp. 958. Removal Of Cases 25(1)

Alleged preemption of state products liability claims against herbicide manufacturer by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) did not make case **removable** under **federal court's** federal question jurisdiction; preemption was defense and, while there is exception to well-pleaded complaint rule where preemptive force of federal statute is so powerful that it provides federal question jurisdiction, FIFRA does not contain provision that grants subject matter jurisdiction to **federal courts** over complaints that include only state law causes of action. Murray v. Commonwealth Edison, N.D.Ill.1995, 905 F.Supp. 512. Removal Of Cases 25(1)

---- Remedies available, complete preemption doctrine, federal question generally

Public Readiness and Emergency Preparedness Act (PREP Act) did not completely preempt negligence claims under Texas law against nursing home operator by executor of estate of nursing home resident who allegedly died from COVID-19 complications, precluding removal of action based on federal-question jurisdiction; only cause of action created by PREP Act was for willful misconduct, which had standard for liability that was more stringent than standard of negligence in any form, and even if compensation fund created by PREP Act was cause of action, PREP Act did not contain specific jurisdictional grant to **federal courts** for enforcement of the right, but instead, PREP Act designated Secretary of Department of Health and Human Services (HHS) to oversee administration of fund. Mitchell v. Advanced HCS, L.L.C., C.A.5 (Tex.) 2022, 28 F.4th 580. Health 607; Removal of Cases 25(1); States 18.15

Safe Sports Authorization Act (SSAA) did not completely preempt taekwondo teacher's Florida-law action against nonprofit organization that investigated allegations of abuse of amateur athletes and national governing body (NGB) for taekwondo seeking declaration that no arbitration agreement existed between him and organization, that he was not bound by organization's Code of Conduct, and that he had not violated Code of Conduct, and thus action could not be removed based on complete preemption; to extent that action challenged determination by organization of teacher's ineligibility to coach amateur athletes, there was not any federal remedy or cause of action under the SSAA through which he could have pursued that claim. Gonzalez v. United States Center for SafeSport, S.D.Fla.2019, 374 F.Supp.3d 1284. **Federal Courts** 2218(2); States 18.3

For purposes of removal of state action to **federal court**, if sole remedy available to plaintiff is federal, because of preemption or otherwise, and state court necessarily must look to federal law in passing on this claim, case is removable regardless of what is in pleading. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 25(1)

---- Well-pleaded complaint, complete preemption doctrine, federal question generally

Exception to well-pleaded complaint rule permits removal of action to **federal court** when federal statute wholly displaces state-law cause of action through complete pre-emption. Aetna Health Inc. v. Davila, U.S.2004, 124 S.Ct. 2488, 542 U.S. 200, 159 L.Ed.2d 312, on remand 388 F.3d 167. Removal Of Cases 25(1)

Complete-preemption doctrine is a limited exception to the well-pleaded-complaint rule and is limited to a handful of federal statutes. Gentek Bldg. Products, Inc. v. Sherwin-Williams Co., C.A.6 (Ohio) 2007, 491 F.3d 320. **Federal Courts** 2218(2)

Under exception or independent corollary to well-pleaded complaint rule known as "complete preemption doctrine," if federal cause of action completely preempts a state cause of action, any complaint that comes within scope of federal cause of action necessarily arises under federal law and is thus removable. Felix v. Lucent Technologies, Inc., C.A.10 (Okla.) 2004, 387 F.3d 1146, certiorari denied 125 S.Ct. 2961, 545 U.S. 1149, 162 L.Ed.2d 905, appeal after remand from **federal court** 157 P.3d 769. Removal Of Cases 25(1)

IGRA has requisite extraordinary preemptive force to satisfy "complete preemption" exception to "well-pleaded complaint rule," as statute's text and structure, legislative history, and jurisdictional framework show intent of Congress that IGRA control Indian gaming and that state regulation take place within its comprehensive regulatory structure; stated purpose of IGRA is to establish "Federal standards for gaming on Indian lands" while legislative history states intent to "expressly preempt the field," fixed division of jurisdiction leaves state without significant regulatory role or means of applying its general civil laws except as negotiated through tribal-state compact, the scope of which is prescribed by IGRA, and every reference to court action specifies **federal court** jurisdiction. Gaming Corp. of America v. Dorsey & Whitney, C.A.8 (Minn.) 1996, 88 F.3d 536. Indians 332

Under the "complete preemption doctrine" exception to the well-pleaded complaint rule, which requires that a federal question be presented on the face of plaintiff's properly pleaded complaint to allow for **removal** to **federal court**, the preemptive force of a statute can convert an ordinary state common-law complaint into one stating a federal claim if the Congress has completely preempted a particular area so that any civil complaint raising the select group of claims is necessarily federal in character. Krashna v. Oliver Realty, Inc., C.A.3 (Pa.) 1990, 895 F.2d 111. Removal Of Cases 25(1)

An exception to the well-pleaded complaint rule for determining the existence of federal question jurisdiction arises when Congress completely preempts a particular area of law such that any civil complaint raising this select group of claims is necessarily federal in character. Rosario v. Syntex (F.P.), Inc., D.Puerto Rico 2012, 842 F.Supp.2d 441. **Federal Courts** 2218(2); States 18.3

State claim may be **removed** to **federal court**, as an exception to the well-pleaded complaint rule, when Congress expressly provides for removal of such actions even when they assert only state-law claims. York v. Day Transfer Co., D.R.I.2007, 525 F.Supp.2d 289. Removal Of Cases 25(1)

Under "complete preemption" exception to well-pleaded complaint rule, if plaintiff's well-pleaded complaint does not show that federal law creates plaintiff's right of action, federal question jurisdiction may exist if plaintiff's right to relief necessarily depends on resolution of substantial question of federal law, i.e., Congress so "completely preempts" particular area that any civil complaint raising this select group of claims is necessarily federal in character. Hurt v. Del Papa Distributing Co., L.P., S.D.Tex.2004, 425 F.Supp.2d 853. **Federal Courts** 2218(2)

The doctrine of "complete preemption," which is an exception to the well-pleaded complaint rule that an action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal law, permits a district court to convert an ordinary state common-law complaint into one stating a federal claim. Fullen v. Philips Electronics North America Corp., N.D.W.Va.2002, 266 F.Supp.2d 471. **Federal Courts** 2218(2); **Federal Courts** 2350; States 18.3

Under "complete preemption" doctrine, if federal statute has sufficient preemptive force, it can provide legal basis for removal of case from state to **federal court** even if plaintiff has framed complaint to allege violations of only state law. Austin v. American General Finance, Inc., M.D.Ala.1995, 900 F.Supp. 396. Removal Of Cases 25(1)

Under well-pleaded complaint rule, hospital's state law claims against administrator of health insurance plan were not **removable** to **federal court** unless doctrine of complete preemption applied; hospital's complaint asserted claims for estoppel, misrepresentation and negligent misrepresentation, and did not expressly refer to ERISA, and rights or immunities created under ERISA were not essential elements of hospital's claims. Charter Fairmount Institute, Inc. v. Alta Health Strategies, E.D.Pa.1993, 835 F.Supp. 233. Removal Of Cases 25(1)

Federal preemption, circumstances wherein substantive state law has been expressly or impliedly usurped by congressional legislation, would empower a **federal court** to glean a federal question in an otherwise well-pleaded state petition to permit removal. Johnny's Pizza House, Inc. v. G & H Properties, Inc., W.D.La.1981, 524 F.Supp. 495, 216 U.S.P.Q. 203. Removal Of Cases 25(1)

---- Miscellaneous cases, complete preemption doctrine, federal question generally

Patient's action alleging that hospital overcharged her, and reneged on its agreements with her health insurance providers regarding the price of her care, was not completely preempted by ERISA, and thus removal was not warranted on that basis; action alleged breach of contract and other state-law claims, patient sued only the hospital based on its billing practices, and although ERISA plan paid small portion of her hospital bill, patient made no claim based on a denial of benefits under an ERISA plan, and her claims did not depend on the terms of any ERISA plan. K.B. by and through Qassis v. Methodist Healthcare - Memphis Hospitals, C.A.6 (Tenn.) 2019, 929 F.3d 795. **Federal Courts** 2263; Labor And Employment 407; States 18.51

Former employees' state action alleging airline failed to pay wages due upon termination of employment was not completely preempted under Railway Labor Act (RLA), and thus **removal** to **federal court** was not warranted, since the RLA required submission of wage disputes to internal dispute-resolution processes and then to an arbitration board, rather than providing an exclusive federal cause of action. Moore-Thomas v. Alaska Airlines, Inc., C.A.9 (Or.) 2009, 553 F.3d 1241. Labor And Employment 2177; Removal Of Cases 25(1); States 18.46

Claims brought by representative of estate of driver, who died after her vehicle was hit by train at railroad crossing, against railway, engineer, and conductor, alleging negligence against all three and premises liability against railway, were not completely preempted under Interstate Commerce Commission Termination Act (ICCTA), and thus removal of representative's state court action to **federal court** was not warranted; ICCTA did not create federal remedy for state tort action related to railroads, and although text of ICCTA specifically mandated that jurisdiction for all matters "managing or governing rail transportation" was vested in federal Surface Transportation Board, that language did not vest original jurisdiction in district court for purposes of

removal. Minton v. Paducah & Louisville Railway, Inc., W.D.Ky.2019, 423 F.Supp.3d 375. Railroads 341.1; Removal of Cases 25(1); States 18.21

Federal laws regulating medical devices did not completely preempt patient's state law causes of action against bone graft device manufacturer, so as to permit removal of patient's state court action alleging negligence, products liability, and fraud to **federal court**, where Medical Device Amendments (MDA) to Federal Food, Drug, and Cosmetic Act specifically disclaimed private cause of action. Dillon v. Medtronic, Inc., E.D.Ky.2014, 992 F.Supp.2d 751. Removal of Cases 25(1)

Court determining whether Depository Institutions Deregulation and Monetary Control Act (DIDA) completely preempted bank customers' state court claims for usury, under Georgia law, against federally insured state-chartered bank was not required to give due deference to Federal Deposit Insurance Corporation's (FDIC) interpretation on matter, since preemption determination involved matter of law which was an area more within expertise of courts than within expertise of administrative agency. Griner v. Synovus Bank, N.D.Ga.2011, 818 F.Supp.2d 1338, appeal after remand from **federal court** 739 S.E.2d 504, 321 Ga.App. 359, reconsideration denied, certiorari granted. Administrative Law And Procedure 2269; Finance, Banking, And Credit 231

Petroleum Marketing Practices Act (PMPA) did not completely preempt fuel and service station owners' state common law rescission claim, and thus, claim could not be recharacterized as a federal question and **removed** to **federal court**; PMPA only preempted "state statutes as to grounds for, procedures form, and notification requirements with respect to termination or non-renewal" of franchise agreements. Kudlek v. Sunoco, Inc. (R & M), E.D.N.Y.2008, 581 F.Supp.2d 413, adhered to on reconsideration 610 F.Supp.2d 218. Antitrust And Trade Regulation 14; Removal Of Cases 25(1); States 18.85

Defense Base Act (DBA) did not completely preempt wrongful death and fraud claims brought under North Carolina law by estates of four security personnel who died in Iraq against security consulting firm; rather than providing for federal cause of action that could be brought in district courts, DBA merely provided for exclusive filing of claim for wrongful death benefits with Secretary of Labor, adjudication of such claims by deputy commissioner or administrative law judge, review of claims by Benefits Review Board, and appellate review by **federal court** of appeals. Nordan v. Blackwater Security Consulting, LLC, E.D.N.C.2005, 382 F.Supp.2d 801, appeal dismissed, mandamus denied 460 F.3d 576, certiorari denied 127 S.Ct. 1381, 549 U.S. 1260, 167 L.Ed.2d 174. Death 8.5; **Federal Courts** 2238; Fraud 31; States 18.15

CERCLA did not completely preempt owner's right under state law to seek contribution from other potentially responsible parties (PRP) for costs incurred in cleaning up hazardous waste facility, and thus owner's state court action was not **removable** to **federal court** on basis of federal question jurisdiction. Southeast Texas Environmental, L.L.C. v. BP Amoco Chemical Co., S.D.Tex.2004, 329 F.Supp.2d 853. Contribution 5(1); Removal Of Cases 25(1); States 18.15

Home Owners Loan Act (HOLA) did not completely preempt borrower's claim against national bank for charging inspection fees prohibited by state law, and thus did not justify removal of borrower's state court action to **federal court**. McKenzie v. Ocwen Federal Bank FSB, D.Md.2004, 306 F.Supp.2d 543. States 18.19

State court suit by lessee of property, subject to railroad right of way, seeking injunction barring railroad-lessor's use of trackage in question and rescission of lease, could be **removed** to **federal court** even though based on Iowa statute governing abandonment of trackage and Iowa common law of leases; Interstate Commerce Commission Termination Act (ICCTA) preempted statute regarding abandonment, creating federal question, and state law lease points could be considered under **federal court's** supplemental jurisdiction. Cedarapids, Inc. v. Chicago, Central & Pacific R. Co., N.D.Iowa 2003, 265 F.Supp.2d 1005. Railroads 82(1); Removal Of Cases 25(1); States 18.21

Shipper's state law claims against carrier for breach of contract and for violations of Texas Deceptive Trade Practices Act arising from damage to goods in interstate shipment were preempted by Carmack Amendment, and thus could be **removed** to **federal court**, even though no federal claims appeared on face of complaint, where amount in controversy exceeded $10,000. Kimmel

v. Bekins Moving & Storage Co., S.D.Tex.2002, 210 F.Supp.2d 850. Antitrust And Trade Regulation 132; Carriers 108; Removal Of Cases 25(1); States 18.21

State law tort claims against gun manufacturers, distributors, and sellers who allegedly marketed and distributed guns in a manner that injured a city, its employees, and its residents were not completely preempted by the Commerce and Import/Export Clauses of the United States Constitution, so as to permit removal of the claims to **federal court**. Archer v. Arms Technology, Inc., E.D.Mich.1999, 72 F.Supp.2d 784. Products Liability 274; Removal Of Cases 25(1); States 18.15

Airline and travel agent failed to establish that airline passengers' claims were preempted by the "substantive scope" of the Warsaw Convention, and therefore there was no basis for **removal** to **federal court**; passengers' claims were based on allegations that harms that she suffered as a result of having been detained and deported by British Immigration Office during an unexpectedly long layover in England while she was flying from the United States to France were due to airline's failure to advise her to wait in transit lounge. Donkor v. British Airways Corp., E.D.N.Y.1999, 62 F.Supp.2d 963. Removal Of Cases 25(1); Removal Of Cases 107(7)

Incumbent local exchange carrier's (LEC) claims for breach of implied-in-fact contract, breach of duty of good faith and fair dealing, taking without just compensation, and violation of federal statutes and regulations, by Federal Communications Commission (FCC) revoking LEC's funding from universal service fund (USF) and National Exchange Carriers Association (NECA) pool for constructing and operating telecommunications network providing service to those living in Hawai'ian Home Lands, were preempted by Communications Act and Hobbs Act, thereby displacing Tucker Act jurisdiction over claims and requiring review by District of Columbia Circuit, since true nature of claims challenged validity and propriety of FCC orders that LEC sought to invalidate and circumvent. Sandwich Isles Communications, Inc. v. United States, Fed.Cl.2019, 145 Fed.Cl. 566. **Federal Courts** 3914

Incumbent local exchange carrier's (LEC) claims for breach of implied-in-fact contract, breach of duty of good faith and fair dealing, taking without just compensation, and violation of federal statutes and regulations, by Federal Communications Commission (FCC) revoking LEC's funding from universal service fund (USF) and National Exchange Carriers Association (NECA) pool for constructing and operating telecommunications network providing service to those living in Hawaiian Home Lands, were preempted by Communications Act and Hobbs Act, thereby displacing Tucker Act jurisdiction over claims and requiring review by District of Columbia Circuit, since true nature of claims challenged validity and propriety of FCC orders that LEC sought to invalidate and circumvent. Sandwich Isles Communications, Inc. v. United States, Fed.Cl.2019, 145 Fed.Cl. 566. **Federal Courts** 3914

Conflict preemption, federal question generally

Conflict preemption is a federal defense which, under the well-pleaded complaint rule, cannot give rise to removal jurisdiction. Flagg v. Ali-Med, Inc., D.Mass.2010, 728 F.Supp.2d 1, appeal after remand from **federal court** 992 N.E.2d 354, 466 Mass. 23. Removal Of Cases 25(1); States 18.3

Well-pleaded complaint rule, federal question generally--Generally

Presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint" rule, under which federal jurisdiction exists only when federal question is presented on face of properly pleaded complaint. Rivet v. Regions Bank of Louisiana, U.S.La.1998, 118 S.Ct. 921, 522 U.S. 470, 139 L.Ed.2d 912, on remand 139 F.3d 512. **Federal Courts** 2350

Generally, the presence or absence of federal question jurisdiction is governed by the well-pleaded complaint rule; that rule provides that federal question jurisdiction exists only when the plaintiff's own cause of action is based on federal law, and only

when plaintiff's well-pleaded complaint raises issues of federal law. Acorne Productions, LLC v. Tjeknavorian, E.D.N.Y.2014, 33 F.Supp.3d 175. **Federal Courts** 2350

Action against Illinois school district seeking injunction to compel school officials to permit autistic student to bring service dog with him to school was not **removable** to **federal court**; while school district alleged that case arose under IDEA, no issue of federal law appeared on face of complaint, in which sole legal authority relied upon was Illinois School Code provision requiring schools to permit service animals to accompany children with disabilities. Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit School Dist. Unit No. 4, S.D.Ill.2009, 644 F.Supp.2d 1084, appeal after remand from **federal court** 920 N.E.2d 651, 336 Ill.Dec. 442, 396 Ill.App.3d 1105. Removal Of Cases 19(1)

The presence or absence of federal question jurisdiction is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists only when a federal question is presented on the face of plaintiff's properly pleaded complaint. Russell v. Sprint Corp., D.Kan.2003, 264 F.Supp.2d 955. **Federal Courts** 2350

To find that cause of action arises under federal law, plaintiff's well-pleaded complaint must on its face raise issue of federal law. Ouellette v. Christ Hosp., S.D.Ohio 1996, 942 F.Supp. 1160. **Federal Courts** 2350

For purposes of removal of state court action to **federal court**, plaintiff is master of complaint, and claim for relief arises under federal law only when substantial federal question is presented on face of plaintiff's well-pleaded complaint. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 25(1)

Presence or absence of federal-question jurisdiction is governed by "well-pleaded complaint rule," which provides that federal jurisdiction exists only when federal question is presented on face of plaintiff's properly pleaded complaint. Constantine v. Minis, S.D.Ga.1995, 910 F.Supp. 657. **Federal Courts** 2350

Under "well-pleaded complaint rule" federal jurisdiction exists only when federal question is presented on face of plaintiff's properly pleaded complaint. Kenro, Inc. v. Fax Daily, Inc., S.D.Ind.1995, 904 F.Supp. 912, reconsideration denied 962 F.Supp. 1162. **Federal Courts** 2350

Under "well-pleaded complaint" rule, federal jurisdiction ordinarily exists only when plaintiff's properly pleaded complaint presents federal question on its face. Hamburger v. Desoutter, Inc., E.D.Mich.1995, 886 F.Supp. 616. **Federal Courts** 2350

Under "well-pleaded complaint rule" for determining removal jurisdiction, a cause of action arises under federal law only when plaintiff's well-pleaded complaint raises issues of federal law; thus, the fact that a defendant might ultimately prove that a plaintiff's claims are preempted does not establish that they are **removable** to **federal court**. Sears v. Chrysler Corp., E.D.Mich.1995, 884 F.Supp. 1125. Removal Of Cases 25(1)

Under "well-pleaded complaint" rule state court action raises federal question and is **removable** to **federal court** only when federal question is presented on face of plaintiff's properly pleaded complaint. Zandi-Dulabi v. Pacific Retirement Plans Inc., N.D.Cal.1993, 828 F.Supp. 760. Removal Of Cases 25(1)

Whether case is one arising under constitution, law, or treaty of United States, in sense of jurisdictional statute, must be determined from what necessarily appears in plaintiff's statement of his own claim in bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought defendant may interpose; federal question upon which jurisdiction is premised must be presented on face of plaintiffs' properly pleaded complaint in order for defendant to **remove** case to **federal court**. Institute of Pennsylvania Hosp. v. Travelers Ins. Co., E.D.Pa.1993, 825 F.Supp. 727. Removal Of Cases 25(1)

"Well-pleaded complaint" rule requires that court determine whether civil action involves federal question based on what necessarily appears in plaintiff's statement of his own claim in bill or declaration, unaided by anything alleged in anticipation or avoidance of defenses which it is thought defendant might interpose. McCaslin v. Blue Cross and Blue Shield of Alabama, N.D.Ala.1991, 779 F.Supp. 1312. **Federal Courts** 2350; **Federal Courts** 2352

Under well-pleaded complaint rule, **federal courts** may hear, originally or by removal from state court, only those cases in which well-pleaded complaint establishes either that federal law creates cause of action or that plaintiff's right to relief necessarily depends on resolution of substantial question of law. Brinkin v. Southern Pacific Transp. Co., N.D.Cal.1983, 572 F.Supp. 236. Removal Of Cases 25(1)

Federal question which is predicate for removal of case to **federal court** must be disclosed on face of complaint, unaided by answer or petition for removal. Drivers, Chauffeurs & Helpers Local Union No. 639 v. Seagram Sales Corp., D.C.D.C.1981, 531 F.Supp. 364. Removal Of Cases 25(1)

To warrant removal of action from state to **federal court** on ground that there exists federal question, controversy with respect to federal question must be essential to plaintiff's cause of action and must be disclosed upon face of complaint; it is not enough that defense founded upon federal law is, or will be asserted. Bruan, Gordon & Co. v. Hellmers, S.D.N.Y.1980, 502 F.Supp. 897. Removal Of Cases 19(1); Removal Of Cases 25(1)

Federal question jurisdiction must appear on the face of the complaint in order to remove a legal action from state court to **federal court** on ground that federal district court has original jurisdiction of the action. Coulston v. International Broth. of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, E.D.Pa.1976, 423 F.Supp. 882. Removal Of Cases 25(1)

To invoke removal jurisdiction of inferior **federal courts**, a substantial federal question must be disclosed in well-pleaded allegations of complaint such that case could have been originally brought in **federal court**. Barnett v. Faber, Coe & Gregg, Inc., S.D.N.Y.1968, 291 F.Supp. 178. Removal Of Cases 25(1)

General rule is that the existence of a federal question depends upon the complaint well pleaded, so that in making its determination as to removability the court will read plaintiff's petition for purpose of ascertaining what is real question presented, and will reject incidental matters. Chambers-Liberty Counties Nav. Dist. v. Parker Bros. & Co., S.D.Tex.1967, 263 F.Supp. 602. **Federal Courts** 2350; **Removal** Of Cases 25(1)

---- Plaintiff's choice of state law, well-pleaded complaint rule, federal question generally

In general, plaintiff can avoid **removal** to **federal court** by alleging only state law claims, as "well-pleaded complaint rule" requires that federal cause of action be stated on face of complaint before defendant may remove action based on federal question jurisdiction and, thus, federal defense, including defense that one or more claims are preempted by federal law, does not give defendant the right to **remove** to **federal court**. Gaming Corp. of America v. Dorsey & Whitney, C.A.8 (Minn.) 1996, 88 F.3d 536. Removal Of Cases 25(1)

Plaintiff has the prerogative of determining the theory of his action and, so long as fraud is not involved, he may defeat **removal** to the **federal courts** by avoiding allegations which provide a basis for the assertion of federal jurisdiction. Jones v. General Tire & Rubber Co., C.A.7 (Ind.) 1976, 541 F.2d 660. Removal Of Cases 25(1)

Cause of action can only be said to arise under the laws of the United States, for purposes of federal question jurisdiction, if federal question appears on face of complaint and this axiom, generally referred to as the "well-pleaded complaint" rule, acts to uphold the right of plaintiff to direct the course of action; in other words, plaintiff is the master of the complaint and is the absolute master of what jurisdiction to appeal to and thus, plaintiff may decide to forego any federal claims and merely pursue

state remedies. Hayduk v. United Parcel Service, Inc., S.D.Fla.1996, 930 F.Supp. 584. **Federal Courts** 2350; **Removal** Of Cases 25(1)

When plaintiff's claim can be based upon either state or federal ground, and he ignores federal question and pitches claim on state ground, **federal court** may not look beyond complaint in its attempt to ascertain nature of plaintiff's claim for purpose of determining its removability. 15 McKay Place Realty Corp. v. AFL-CIO, 32B-32J, Service Employees Intern. Union, E.D.N.Y.1983, 576 F.Supp. 1423. Removal Of Cases 107(4)

Generally, plaintiff is free to ignore federal question and pitch his claim on state ground, so long as no fraud is involved, thus defeating **removal** to **federal court**. Chappell v. SCA Services, Inc., C.D.Ill.1982, 540 F.Supp. 1087. Removal Of Cases 25(1)

Whenever a plaintiff has a remedy under both the state and the federal law, he may base his claim in state court solely on the state law and thus prevent **removal** to **federal court**, absent diversity of citizenship. Coulston v. International Broth. of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, E.D.Pa.1976, 423 F.Supp. 882. Removal Of Cases 101.1

Although the **federal court's** role is to pierce the veil of plaintiff's complaint, plaintiff is still the master of his own complaint as to what law he will rely upon, and absent fraudulent concealment of a federal claim, he has the right to choose by allegations of his complaint the removability of his case. Ashley v. Southwestern Bell Tel. Co., W.D.Tex.1976, 410 F.Supp. 1389. Removal Of Cases 25(1)

Since borrowers stated several viable state law claims against loan company and expressly stated that they were not relying on any law other than state law to support their causes of action, action could not be **removed** to **federal court** pursuant to artful pleading rule, even though complaint stated claims which appeared to be based upon federal law. Allen v. City Finance Co., S.D.Miss.1998, 224 B.R. 347. Removal Of Cases 25(1)

---- Artful pleading exception, well-pleaded complaint rule, federal question generally

Cities' actions asserting energy companies' liability under California law for a public nuisance, based on allegations that companies' production and promotion of fossil fuels caused or contributed to global warming that induced a sea-level rise, did not fall within artful pleading doctrine, as an exception to well-pleaded complaint rule with respect to federal question jurisdiction, which exception would allow **removal** to **federal court** if federal law completely preempted a state-law claim; Clean Air Act (CAA) did not have the extraordinary preemptive force needed for the artful pleading doctrine. City of Oakland v. BP PLC, C.A.9 (Cal.) 2020, 969 F.3d 895, certiorari denied 141 S.Ct. 2776, 210 L.Ed.2d 916. Removal of Cases 25(1)

Federal court may in some situations look beyond face of complaint to determine whether plaintiff has artfully pleaded his suit so as to couch federal claim in terms of state law, and in those cases, Court of Appeals will conclude that plaintiff's claim actually arose under federal law and is therefore removable. Burda v. M. Ecker Co., C.A.7 (Ill.) 1992, 954 F.2d 434, on remand. Removal Of Cases 25(1)

Under "artful pleading doctrine," if court concludes that plaintiff's failure to plead her federal claim was not in good faith, but rather was in attempt to conceal the fact that her claim was truly **federal**, **court** will allow **removal**. Aaron v. National Union Fire Ins. Co. of Pittsburg, Pa., C.A.5 (La.) 1989, 876 F.2d 1157, rehearing denied 886 F.2d 1314, certiorari denied 110 S.Ct. 1121, 493 U.S. 1074, 107 L.Ed.2d 1028. Removal Of Cases 25(1)

A plaintiff who has both federal and state causes of action may choose to ignore federal claims and pursue only state claims in state court; defendant is entitled to have case **removed** to **federal court**, however, if plaintiff is attempting to avoid having an essential federal claim adjudicated in federal forum merely by artfully drafting complaint in terms of state law. People of

State of Ill. v. Kerr-McGee Chemical Corp., C.A.7 (Ill.) 1982, 677 F.2d 571, certiorari denied 103 S.Ct. 469, 459 U.S. 1049, 74 L.Ed.2d 618. Courts 489(1); Removal Of Cases 25(1)

District court would consider employee's complaint in her first state court suit against her former employer and an individual defendant, which she had voluntarily dismissed, when determining whether employer had properly removed employee's second state court suit, on the ground that the employee's claims for wrongful termination based on race and/or disability, in violation of the Florida Civil Rights Act, were completely preempted by ERISA; although employee did not reassert in her second suit her claims against the individual defendant for intentionally interfering with her rights to health insurance, employee's second effort to avoid **federal court** jurisdiction by characterizing her own claims did not preclude the court from assessing the actual nature of her claims. Attilus v. Emblemhealth Administrators, Inc., S.D.Fla.2017, 233 F.Supp.3d 1341. Removal of Cases 25(1)

A plaintiff may not sidestep an appropriate **removal** to **federal court** by using an artful pleading to present his or her claim based only on state law. Rosario v. Syntex (F.P.), Inc., D.Puerto Rico 2012, 842 F.Supp.2d 441. Removal Of Cases 25(1)

The artful pleading doctrine, an exception to the "well-pleaded complaint rule," allows an action's **removal** to **federal court**, even where no federal question appears on the face of the complaint, so long as federal law completely preempts a plaintiff's state law claim. Kudlek v. Sunoco, Inc. (R & M), E.D.N.Y.2008, 581 F.Supp.2d 413, adhered to on reconsideration 610 F.Supp.2d 218. Removal Of Cases 25(1)

Employee, by pleading class action causes of action under California Labor Code for indemnification from employer for expenses of using employer-owned vans, relating to employer's imputation of three dollars in income per work day for an employee's use of employer-owned van to travel to and from first and last sites visited in employees' account management positions, was not improperly avoiding federal-question jurisdiction by artfully pleading federal claim for tax refund based on employer's alleged misapplication of Internal Revenue Code (IRC) provision defining taxable gross income; complaint did not seek recovery of taxes already paid and did not challenge IRC's terms, and instead sought change in employer's definition of first and last trips of each day from "commuting" to "working," possibly requiring state court to consult and apply plain language of Internal Revenue Service (IRS) regulation regarding taxation of fringe benefits. McMaster v. Coca-Cola Bottling Co. of California, N.D.Cal.2005, 392 F.Supp.2d 1107. **Federal Courts** 2351(1)

Under "artful pleading" exception to well pleaded complaint rule, allowing determination of federal subject matter jurisdiction to be determined by what necessarily appears in plaintiff's statement of claim, state law claim may be recharacterized as federal claim if state law claim must be preempted by federal law, and federal law must provide plaintiff with cause of action to remedy asserted wrong. Converse County School Dist. No. Two v. Pratt, D.Wyo.1997, 993 F.Supp. 848. **Federal Courts** 2218(1)

For purposes of removal of state action to **federal court**, well-pleaded complaint rule does not permit plaintiff to evade removal by artfully pleading as state claim what actually is claim arising under federal law. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 25(1)

Exception to well-pleaded complaint rule is "artful pleading doctrine," which holds that **federal courts** may, under certain circumstances, look beyond face of complaint to determine whether plaintiff has artfully pleaded his or her cause of action so as to couch federal claim in terms of state law; in such cases, **federal courts** will conclude that plaintiff's claim actually arose under federal law and is therefore subject to removal. Emerson Power Transmission Corp. v. Roller Bearing Co. of America, Inc., N.D.Ind.1996, 922 F.Supp. 1306. Removal Of Cases 25(1)

Plaintiff may not defeat removal simply by omitting to plead necessary federal questions in his or her complaint; in cases of such "artful pleading," court must evaluate motive for plaintiff's failure to plead federal cause of action, and if court concludes that failure to plead cause of action was not in good faith, but was an attempt to conceal fact that claim was truly **federal**, **court** will allow **removal**. Howard v. Hibbard Brown & Co., Inc., D.Kan.1993, 835 F.Supp. 1331. Removal Of Cases 25(1)

"Artful pleading" exception to well-pleaded complaint doctrine did not apply to action seeking to enjoin alleged violation of city zoning ordinance, absent showing that claim could have been initially filed in **federal court**. Robinson v. Eichler, D.Conn.1992, 795 F.Supp. 1253. Removal Of Cases 25(1)

The "artful pleading" exception to the well-pleaded complaint rule requires **federal courts** to look beyond the face of a complaint to expose any federal claim for purposes of determining whether **removal** to **federal court** is proper. McElroy v. SOS Intern., Inc., N.D.Ill.1989, 730 F.Supp. 803. Removal Of Cases 25(1)

Plaintiff who has both federal and state causes of action may choose to ignore the federal claims and pursue only the state claims in state court, and though defendant is entitled to have case **removed** to **federal court** if plaintiff is attempting to avoid having an essentially federal claim adjudicated in federal forum merely by artfully drafting complaint in terms of state law, federal question must be an essential element of the complaint to provide grounds for removal. Zack Co. v. Howard, N.D.Ill.1987, 658 F.Supp. 73. Removal Of Cases 25(1)

In determining whether **federal court** may properly exercise removal jurisdiction over action, district court should, under doctrine of "artful pleading," examine complaint, upon petition by defendant, to determine whether complaint states, on its face, federal claim; this is particularly true where federal law has clearly preempted state law on subject. Gray v. Chessie System, D.C.Md.1984, 588 F.Supp. 1334. Removal Of Cases 25(1)

When a state plaintiff disguises his complaint so that it hides a claim that rests within the exclusive jurisdiction of the **federal courts**, **removal** is proper, and **federal court** might also justifiably deny motion to remand if state plaintiff's claim is premised on a state law in direct conflict with federal law and plaintiff has been put on notice that the state law has been preempted by discovering that dual compliance is impossible. Eure v. NVF Co., E.D.N.C.1979, 481 F.Supp. 639. Removal Of Cases 25(1); Removal Of Cases 107(5)

Neither artful or inartful pleading, nor inadvertence, mistake, or fraud can keep the **federal courts** from their appointed task of reaching the real nature of the claim asserted in plaintiff's complaint and uncovering any lurking federal question. Ashley v. Southwestern Bell Tel. Co., W.D.Tex.1976, 410 F.Supp. 1389. Removal Of Cases 25(1)

A plaintiff may not defeat federal jurisdiction in removal situation by omitting or neglecting to include reference to federal statutes which are an essential part of the lawsuit. Sweeney v. Morgan Drive Away, Inc., D.C.Colo.1975, 394 F.Supp. 1216. **Federal Courts** 2349

Removal of case may be allowed even though plaintiff has expressly denied any attempt to involve federal question jurisdiction. La Chemise Lacoste v. Alligator Co., D.C.Del.1970, 313 F.Supp. 915, 165 U.S.P.Q. 766. Removal Of Cases 25(1)

Where plaintiff has right to relief either under federal law or under state law as independent source of that right, **federal court** on **removal** proceedings may not generally look beyond face of initial pleading in state action to determine whether federal question is presented, but if Congress has deemed that federal substantive law should altogether preempt and supplant state law, plaintiff may not by artful manipulation of terms of complaint defeat such objective. Hearst Corp. v. Shopping Center Network, Inc., S.D.N.Y.1969, 307 F.Supp. 551, 165 U.S.P.Q. 51. Removal Of Cases 25(1)

---- Amendment of complaint, well-pleaded complaint rule, federal question generally

Merchant's original complaint against providers of payment card network services, which contained allegations that merchant had incurred interchange fees stemming from the use of foreign-issued cards, rather than merchant's amended complaint denying such fees, was operative pleading at time of **removal**, supporting **federal court's** exercise of jurisdiction over merchant's state antitrust class action against the providers pursuant to Edge Act, since merchant could not defeat **federal court's** jurisdiction

by attempting to amend complaint to plead around the Edge Act's removal provision. Luby's Fuddruckers Restaurants, LLC v. Visa Inc., E.D.N.Y.2018, 342 F.Supp.3d 306. Removal of Cases 25(3); Removal of Cases 118

Once properly **removed** to **federal court** based on federal question jurisdiction, simple act of amending complaint to strike all federal claims does not automatically remove case from district court's purview, but district court has discretion to remand supplemental state law claims after plaintiff has dropped federal claims on which removal was originally based. Brock v. DeBray, M.D.Ala.1994, 869 F.Supp. 926. Removal Of Cases 25(1)

Actual controversy, federal question generally

In order to support federal question jurisdiction, the federal issue effecting removal necessarily must raise an actually disputed and substantial federal question; moreover, even if a disputed and substantial federal issue is present, a court may exercise federal question jurisdiction over state law claims only if the claims are of a type that a **federal court** may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities. Snook v. Deutsche Bank AG, S.D.Tex.2006, 410 F.Supp.2d 519. Removal Of Cases 25(1)

For a case to arise "under the Constitution or laws of the United States," right or immunity created thereby must be essential element of plaintiff's cause of action, and right or immunity must be supported if Constitution or laws of United States are given one construction or effect and defeated if they receive another, and genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto, and controversy must be disclosed on face of complaint unaided by answer or by petition for removal. Abrams v. Hart Cotton Mills, E.D.N.C.1949, 85 F.Supp. 664. See, also, Marsden v. Southern Flight Service, Inc., D.C.N.C.1961, 192 F.Supp. 418. **Federal Courts** 2213; **Federal Courts** 2321; **Federal Courts** 2349

Potential federal question, federal question generally

Fact that defendant might ultimately prove that a plaintiff's claims are pre-empted by federal law does not establish that they are **removable** to **federal court** on basis of original subject matter jurisdiction, rather removal is proper, only if district court can discern federal question. Miller v. PPG Industries, Inc., W.D.Ky.2002, 237 F.Supp.2d 756. Removal Of Cases 11

Statement in complaint indicating that, should plaintiff recover punitive damages against insurer, plaintiff would claim that Alabama's recently enacted statutes restricting plaintiff's right to such damages violated State and Federal Constitutions did not provide basis for federal question jurisdiction and removal of case to **federal court**; plaintiff would have to prove that defendants violated Alabama law and that she was entitled to punitive damages before question would be reached whether anything in state law restrictions on punitive damages was inconsistent with Federal Constitution and most that could be said was that question of federal law was lurking in background. Bender v. Prudential Ins. Co. of America, M.D.Ala.1994, 860 F.Supp. 803. Removal Of Cases 25(1)

Fact that defendant's obligations might be governed by federal law is but one factor to be considered in determining whether **federal courts** should permit **removal**. Lance Intern., Inc. v. Aetna Cas. & Sur. Co., S.D.N.Y.1967, 264 F.Supp. 349. Removal Of Cases 19(1)

Mere fact that during course of proceedings **federal court** question may arise is not ground for removal of action to **federal court**. Santa Margarita Mut. Water Co. v. State Water Rights Bd. of State of Cal., S.D.Cal.1958, 165 F.Supp. 870. Removal Of Cases 19(1)

The mere possibility that a federal question might arise in the determination of a given cause of action does not necessarily mean that the action is one within original jurisdiction of **federal courts** or **removal** to **federal court**. Lock Joint Pipe Co. v. Anderson, W.D.Mo.1955, 127 F.Supp. 692. **Federal Courts** 2213; **Removal** Of Cases 19(1)

Previously decided questions, federal question generally

A case does not arise under the laws of the United States simply because the Supreme Court, or any other **federal court**, has decided, in another suit, the questions of law which are involved in it. Leather Manufacturers' Nat. Bank v. Cooper, U.S.N.Y.1887, 7 S.Ct. 777, 120 U.S. 778, 30 L.Ed. 816. Removal Of Cases 19(1)

Voters' state court complaint challenging Ohio Secretary of State's finding that provisional ballots complied with state law did not allege violation of consent decrees entered in prior **federal court** action or turn on them, and thus was not removable on that basis, where voters were not parties to prior action, voters did not allege that Secretary had violated **federal court** order, decrees did not contain any conclusion that Ohio's election laws violated any provision of positive federal law or that Constitution, congressional enactment, or agency regulation required reading state statutes in certain way, and **federal court's** resolution of issue would not head off future lawsuits. Ohio ex rel. Skaggs v. Brunner, C.A.6 (Ohio) 2008, 549 F.3d 468. Removal Of Cases 25(1)

Fact that state court suit involves construction and effect of **federal court** judgment does not make it one arising under federal law and hence removable. State of Okl. ex rel. Wilson v. Blankenship, C.A.10 (Okla.) 1971, 447 F.2d 687, certiorari denied 92 S.Ct. 942, 405 U.S. 918, 30 L.Ed.2d 787. Removal Of Cases 19(1)

Questions of law, federal question generally

A "federal question" which will confer jurisdiction on a **federal court** by **removal** must be a question of law, not of fact, and must be a dispute as to construction of statute, constitution, or treaty. In re Vadner, D.C.Nev.1918, 259 F. 614. Removal Of Cases 23

Merits of claim, federal question generally

Court does not pass on the merits of the case in evaluating constitutional claims for jurisdictional purposes. Ortiz-Bonilla v. Federacion de Ajedrez de Puerto Rico, Inc., C.A.1 (Puerto Rico) 2013, 734 F.3d 28. **Federal Courts** 2073

Citizenship of parties, federal question generally

Diversity of citizenship provided basis for appellate jurisdiction of action that had been removed from state court on basis of "related to" bankruptcy jurisdiction, even if district court lacked "related to" jurisdiction, parties were not completely diverse at time of removal, and removal statement did not include diversity jurisdiction; plaintiff amended its complaint after court denied plaintiff's motion to remand to drop all claims against nondiverse parties and case proceeded to judgment in **federal court**, and thus considerations of finality, efficiency, and economy overwhelmed considerations that favored remanding. Buffets, Inc. v. Leischow, C.A.8 (Minn.) 2013, 732 F.3d 889. Bankruptcy 2095.18

Burden of proof, federal question generally

A defendant is required to demonstrate that a district court would have original jurisdiction over a civil action in order to invoke the **federal court's removal** jurisdiction. Eastman v. Marine Mechanical Corp., C.A.6 (Ohio) 2006, 438 F.3d 544, certiorari denied 127 S.Ct. 73, 549 U.S. 815, 166 L.Ed.2d 26. Removal Of Cases 11

Party seeking to litigate in **federal court** bears the burden of establishing the existence of federal subject matter jurisdiction; this is no less true where it is the defendants, rather than the plaintiff, who seek the federal forum. Scaccia v. Lemmie, S.D.Ohio 2002, 236 F.Supp.2d 830. **Federal Courts** 2081; **Removal** Of Cases 107(7)

Defendant seeking to invoke jurisdiction of **federal court** by way of removal, has burden of establishing that action arises under federal law. Beacon Moving & Storage, Inc. v. Local 814, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers, S.D.N.Y.1972, 362 F.Supp. 442. Removal Of Cases 107(7)

FEDERAL QUESTION IN PARTICULAR ACTS AND CLAIMS

Accounting, federal question in particular acts and claims

Action by owners and publishers, whose Cuban plants had been seized by Cuban government, for an accounting by distributor of their magazines, was not removable from state to **federal court**. Prensa Grafica Cubana S.A. v. Osle, S.D.N.Y.1961, 195 F.Supp. 636. Removal Of Cases 19(1)

---- Saving to suitors, admiralty and maritime claims, federal question in particular acts and claims

Injured offshore platform worker's state court suit against non-resident defendant, asserting both general maritime claims and claims under Outer Continental Shelf Lands Act (OCSLA), was **removable** to **federal court**; though general claims were saved to suitors, OCSLA claim provided independent basis for removal. Morris v. T E Marine Corp., C.A.5 (La.) 2003, 344 F.3d 439. Removal Of Cases 19(5)

Worker's maritime claims against ship owner fell within saving-to-suitors exception to original admiralty jurisdiction, and thus his case was not removable; when worker filed his maritime claims in state court, he demanded a jury trial, but since jury trials were generally not granted in admiralty cases in **federal court**, he would lose his common law right to a trial by jury and would effectively be forced out of a court of law and into a court of admiralty, which was specifically prevented by the saving-to-suitors clause. Boakye v. NCL (Bahamas) Ltd., N.D.Ga.2018, 295 F.Supp.3d 1342. Removal of Cases 19(5)

Worker's general maritime negligence claims against maritime engineer were not subject to removal from state court to **federal court** pursuant to saving-to-suitors exception to original admiralty jurisdiction. Carnes v. Friede & Goldman, L.L.C., E.D.Tex.2015, 103 F.Supp.3d 821, on remand 2016 WL 9753800. Admiralty 2; Removal of Cases 3

Contractor's employee's state court action against barge owner to recover for injuries sustained while working on barge fell within scope of "savings to suitors" clause of admiralty jurisdiction statute, and thus was not subject to **removal** to **federal court**, in absence of diversity jurisdiction; removal eliminated employee's right to jury trial. Rutherford v. Breathwite Marine Contractors, Ltd., S.D.Tex.2014, 59 F.Supp.3d 809. Admiralty 2; Admiralty 80; Removal of Cases 3; Removal of Cases 95

Admiralty claims brought in state court, such as one brought under "savings to suitors" clause of jurisdictional statute governing civil case of admiralty or maritime jurisdiction, are not removable absent some other jurisdictional basis, such as diversity or federal question jurisdiction; this rule applies even when the applicable admiralty law is codified in the United States Code. Cornelio v. Premier Pacific Seafoods, Inc., W.D.Wash.2003, 279 F.Supp.2d 1228, appeal after remand from **federal court** 127 Wash.App. 1037, review denied 132 P.3d 735, 156 Wash.2d 1023. Removal Of Cases 19(5)

When plaintiff exercises option to bring maritime law action in state court under saving to suitors clause, rather than under admiralty jurisdiction of **federal courts**, defendants cannot **remove** case by asserting federal question jurisdiction; only basis for removal of such cases is when subject matter jurisdiction is founded on diversity of citizenship. Benjamin v. Natural Gas Pipeline Co. of America, S.D.Tex.1992, 793 F.Supp. 729. Removal Of Cases 3

An action for collision damage to libelant's pier was one for negligence under the general maritime law, and was not an action arising under the Constitution, laws or treaties of the United States over which **federal court** had jurisdiction by § 1331 of this title, but was a "saving clause" action, and not removable. Harbor Boating Club of Huntington, N.Y., Inc. v. Red Star Towing & Transp. Co., E.D.N.Y.1960, 179 F.Supp. 755. Removal Of Cases 19(5)

---- Jones Act, admiralty and maritime claims, federal question in particular acts and claims

Material issues of fact existed regarding whether employee, who was killed when piece of metal detached from crane and fell onto his head, spent more than 30% of his re-employment period at pumping station in service of spud barge, or some other barge or vessel moored in drainage pool, and as to whether spud barge qualified as vessel in navigation, as would support finding that employee was seaman at time of his death, and thus Jones Act negligence action brought by employee's wife was not **removable** to **federal court**. Perez v. Aquaterra Contracting, LLC, E.D.La.2022, 2022 WL 872825. Removal of Cases 3

It was not reasonably ascertainable from original state court complaint that seaman's claims, alleging that he was injured as a result of vessel owner's alleged refusal to provide maintenance and cure after he became ill while working on the vessel, were **removable** to **federal court** in light of the bar on removing Jones Act claims, and thus, owner was not required to file a notice of removal within 30-days of receiving original complaint; complaint referred to the case as a Jones Act seaman's personal injury case, and it alleged that the Jones Act seaman's claims filed in state court were not removable under either federal question jurisdiction or diversity jurisdiction. Stemmle v. Interlake Steamship Company, E.D.N.Y.2016, 198 F.Supp.3d 149. Removal of Cases 79(1)

Statutory bar precluded removal of Jones Act claims of seaman, seeking to recover damages for injuries he allegedly sustained when vessel on which he was working was struck and damaged by another vessel while in port in Trinidad, even if his maritime claims against operator of other vessel were otherwise **removable** to **federal court** on basis of admiralty jurisdiction, where seaman did not allege any claim that would give rise to federal question jurisdiction. Doyle v. Tidewater Inc., E.D.La.2015, 147 F.Supp.3d 485. Removal of Cases 3

Claims asserted by Philippine seamen and their widows, for death or injury of seamen in steam boiler explosion upon vessel where they were working, were properly **removed** to **federal court** for purpose of enforcing arbitration provision incorporated in seamen's employment contracts; while Jones Act cases may not be removed based on federal question jurisdiction, cases were removed, not under the Jones Act, but under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Bautista v. Star Cruises, S.D.Fla.2003, 286 F.Supp.2d 1352, affirmed 396 F.3d 1289, certiorari dismissed 125 S.Ct. 2954, 545 U.S. 1136, 162 L.Ed.2d 884. Removal Of Cases 3; Removal Of Cases 19(1); Removal Of Cases 19(5)

---- Longshore and Harbor Workers' Compensation Act, admiralty and maritime claims, federal question in particular acts and claims

1972 amendments to Longshoremen's and Harbor Workers' Compensation Act, § 901 et seq. of Title 33, did not create federal maritime negligence action, but rather maintained common-law maritime negligence action and thus, there was no federal question affording basis for removal of such actions from state to **federal court**. Giacona v. Capricorn Shipping Co., S.D.Tex.1975, 394 F.Supp. 1189. Removal Of Cases 19(5)

---- Outer Continental Shelf Lands Act, admiralty and maritime claims, federal question in particular acts and claims

Outer Continental Shelf Land Act (OCSLA) could not serve as basis of federal jurisdiction required to remove maritime case to **federal court**, and thus remand to state court was required, where defendant failed to mention OCSLA in notice of removal.

Cormier v. Chet Morrison Contractors, LLC, S.D.Tex.2015, 85 F.Supp.3d 880. Removal of Cases 86(1); Removal of Cases 102

---- Miscellaneous claims, admiralty and maritime claims, federal question in particular acts and claims

Passengers of airplane that crashed into seawall could have filed their action against airplane manufacturer in federal district court, pursuant to statute giving district courts original jurisdiction over maritime and admiralty claims, and thus manufacturer was entitled to remove the action to **federal court**, where airplane flight that crashed bore a significant relationship to a traditional maritime activity. Lu Junhong v. Boeing Co., C.A.7 (Ill.) 2015, 792 F.3d 805, rehearing and rehearing en banc denied. Admiralty 22; Removal of Cases 19(5)

Removal of admiralty action brought by crane operator, who allegedly sustained injuries while operating crane on port when ship struck crane, would not be proper based on supplemental jurisdiction, in action in which operator asserted in personam claims against board of commissioners of port and in rem claims against ship; although operator's in personam claims were sufficiently related to in rem claims for purposes of supplemental jurisdiction, in rem claims were voluntarily dismissed, resulting in there being no remaining claims over which district court had original jurisdiction, and, by voluntarily dismissing in rem claims, operator evinced intent to invoke option of proceeding in state court under Saving to Suitors Clause exception to federal admiralty jurisdiction. Finney v. Board of Commissioners of Port of New Orleans, E.D.La.2021, 2021 WL 5905642. **Federal Courts** 2564; **Removal** of Cases 3

Seamen's claims against employer, alleging violation of written contract provisions and seeking an accounting pursuant to federal statute governing fishing agreements, sounded in admiralty and did not arise under the laws of the United States for purposes of removal based on federal question jurisdiction, even though federal statute did not state that claims brought under them were in admiralty; employer provided no plausible argument to dispute that claims were not in admiralty, and as admiralty claims they were not removable absent some other jurisdictional basis such as diversity. Cornelio v. Premier Pacific Seafoods, Inc., W.D.Wash.2003, 279 F.Supp.2d 1228, appeal after remand from **federal court** 127 Wash.App. 1037, review denied 132 P.3d 735, 156 Wash.2d 1023. Removal Of Cases 19(5)

Freight forwarder's action against its former subsidiary, based on allegation that subsidiary breached agreement under which stock was sold by continuing to use the freight forwarder's trade name and logo, did not arise under the Federal Maritime Commission license statute, so as to support exercise of federal jurisdiction; regulation governing license at issue did not confer private cause of action for violations, and freight forwarder had not complied with statutory prerequisites for cause of action in district court by filing sworn complaint with the Federal Maritime Commission. F.W. Myers & Co., Inc. v. World Projects Intern., Inc., N.D.N.Y.1995, 903 F.Supp. 353. Action 3; **Federal Courts** 2245; Shipping 103

Action on marine insurance policy was within original admiralty jurisdiction of **federal courts** and could be removed from state court, where plaintiffs acquiesced in removal and consistently maintained that claims were admiralty claims and not state claims filed under saving to suitors clause. McAllister Bros., Inc. v. Ocean Marine Indem. Co., S.D.N.Y.1989, 742 F.Supp. 70. Removal Of Cases 11

Insured's choice of filing civil action in state court on marine hull policy could not be nullified by permitting insurer to **remove** case to **federal court** as case "arising under" Constitution, treaties or laws of United States. Queen Victoria Corp. v. Insurance Specialists of Hawaii, Inc., D.Hawai'i 1988, 694 F.Supp. 1480. Removal Of Cases 19(5)

Authority to issue dredging permits is not specifically provided under § 403 of Title 33 relating to obstruction of navigable waters and § 407 of Title 33 relating to deposit of refuse from navigable waters, and merely because dredging activities which allegedly caused damage were conducted outside scope of a permit does not mean that a violation of these statutes or of any other statute had occurred, so that permit itself could not be labeled a law of United States within meaning of this section relating

to removal of actions generally, and permit alone would provide no foundation for **removal** to **federal court**. Chambers-Liberty Counties Nav. Dist. v. Parker Bros. & Co., S.D.Tex.1967, 263 F.Supp. 602. Removal Of Cases 19(5); Water Law 2626

Agriculture and farming, federal question in particular acts and claims--Generally

Stockyard company's action against meat company to recover sums allegedly due under agreement and for relief under Colorado forcible entry and detainer statute, C.R.S. '63, 58-1-1 et seq. to recover possession of premises occupied by the company under a license with stockyard company was based on common law and state statutory law and although industry was federally regulated and some matters of federal law might be dispositive of case, **federal court** did not have jurisdiction thereof under provisions of this section relating to civil actions arising under laws of United States. Denver Union Stock Yard Co. v. Litvak Meat Co., D.C.Colo.1968, 295 F.Supp. 809. Removal Of Cases 19(1)

Defendant ASC committee was authorized by this section to remove review of its decision from state to **federal court**. Davis v. Joyner, E.D.N.C.1964, 240 F.Supp. 689. Removal Of Cases 4

---- Agricultural Adjustment Acts, agriculture and farming, federal question in particular acts and claims

Since § 1365 of Title 7 does not expressly prohibit removal of action in state court by farmer for judicial review of determination of county committee that he had exceeded marketing quota, **federal court** would not do it by implication or by ignoring the meaning of this section allowing removal where original jurisdiction vests in **federal court**. Beckman v. Graves, C.A.10 (Kan.) 1966, 360 F.2d 148. Removal Of Cases 13

That § 1365 of Title 7 conferred concurrent jurisdiction of review procedure on state and **federal courts** did not impliedly repeal removal provisions of former § 71 of this title. Larkin v. Roseberry, E.D.Ky.1944, 54 F.Supp. 373. See, also, Vann v. Jackson, D.C.N.C.1958, 165 F.Supp. 377. Removal Of Cases 2

---- Federal Crop Insurance Act, agriculture and farming, federal question in particular acts and claims

The Federal Crop Insurance Act does not expressly provide that actions brought in state courts pursuant to it may not be **removed** to **federal courts**, and therefore the instant action, seeking indemnity for crop losses under an insurance policy issued by the Federal Crop Insurance Corporation, was properly removed from state court. Whitfield v. Federal Crop Ins. Corp., C.A.4 (N.C.) 1977, 557 F.2d 413. Removal Of Cases 19(8)

Antitrust, federal question in particular acts and claims--Generally

If defendants proffer antitrust violation as defense to state court action to recover on promissory notes, **removal** to **federal court** would be denied. Appalachian Power Co. v. Region Properties, Inc., W.D.Va.1973, 364 F.Supp. 1273. Removal Of Cases 25(1)

---- Price fixing, antitrust, federal question in particular acts and claims

Action alleging that fixing of prices of albacore tuna violated California's Cartwright Act, West's Ann.Cal.Bus. & Prof.Code § 16700 et seq. and Unfair Trade Practices Act, Cal.Bus. & Prof.Code § 17000 et seq., was not **removable** to **federal court** on basis of defendants' assertion that they could not be held liable because they purchased albacore tuna primarily from fishermen's cooperative association, which enjoyed immunity from federal antitrust laws under Fisheries Cooperative Marketing Act, section 521 et seq. of Title 15, since defendants' assertion was raised in anticipation of defense and was not basis for complaint. Tom Lazio Fish Co., Inc. v. Castle & Cooke, Inc., N.D.Cal.1983, 557 F.Supp. 559. Removal Of Cases 19(1)

---- Miscellaneous actions, antitrust, federal question in particular acts and claims

Cardiologists' and medical center's complaint against cardiologists' former employer did not, on its face, create federal question jurisdiction, as would support removal of action to **federal court**; although complaint referred to, and attached Federal Trade Commission (FTC) exhibit alleging violation of, the Clayton Act, cardiologists and medical center did not seek relief under Clayton Act, and every claim for relief listed in complaint arose under state law, not federal law. St. Mary's Regional Medical Center v. Renown Health, D.Nev.2014, 35 F.Supp.3d 1275. Removal of Cases 25(1)

Action wherein employee alleged that restrictive covenants in employment agreements with prior employer unlawfully restrained competition and free exercise of activities in conduct of insurance brokerage business in violation of common law of New York and the Donnelly Act was improperly **removed** to **federal court** and would be remanded to state court; employee chose from the beginning to sue in New York, presumably because of New York's disfavor of restrictive covenants in employment agreements, gravamen of the complaint was an attack of the validity of the restrictive covenants agreed to by employee, and employer's principal place of business was New York. Bowlus v. Alexander & Alexander Services, Inc., S.D.N.Y.1987, 659 F.Supp. 914. Removal Of Cases 102

Where complaint filed in state court contained only allegations of noncompliance with North Carolina Tender Offer Disclosure Act, G.S.N.C. § 78B-1 et seq., no federal question existed and case could not be **removed** to **federal court** on ground of federal question jurisdiction, despite fact that defendants contended in their petition for removal and answer that the state law was void as imposing undue burden on interstate commerce. Eure v. NVF Co., E.D.N.C.1979, 481 F.Supp. 639. Removal Of Cases 25(1)

Where sublessee filed suit in **federal court** under the Sherman Act, §§ 1 to 7 of Title 15, and the Clayton Act, §§ 12 to 27 of Title 15, alleging entry into a dealer franchise agreement and execution of a sublease and sublessor sought repossession of the premises in the state court, sublessee was not entitled to removal of the state court proceedings into the **federal court** based on violation of the antitrust laws based on issue he interjected into state proceedings. Potter v. Carvel Stores of New York, Inc., D.C.Md.1962, 203 F.Supp. 462, affirmed 314 F.2d 45. Removal Of Cases 25(1)

Arbitration, federal question in particular acts and claims

Neither motion to confirm nor application to vacate arbitration award made pursuant to merger agreement presented a federal question that could support removal of matter to **federal court**, notwithstanding that underlying dispute between the parties purportedly implicated federal securities law; the decision as to whether those claims were arbitrable under the parties' agreement, which was all that was presented for consideration, did not itself implicate any federal law that could serve as basis for federal question jurisdiction. Med-Tel Intern. Corp. v. Loulakis, E.D.Va.2005, 403 F.Supp.2d 496. Removal Of Cases 19(1)

Brokerage firm could not **remove** to **federal court** investors' action brought in Pennsylvania state court against firm, its local Pennsylvania office, and broker alleging negligence, breach of contract, and violation of Pennsylvania statutes; complete diversity of citizenship was lacking, and although the investors' claims were allegedly subject to arbitration, the Federal Arbitration Act (FAA) did not provide an independent basis for federal subject matter jurisdiction. Morgan Stanley Dean Witter Reynolds, Inc. v. Gekas, M.D.Pa.2004, 309 F.Supp.2d 652. Removal Of Cases 19(1); Removal Of Cases 26

Aviation and air transportation, federal question in particular acts and claims--Generally

State-law non-respiratory personal injury claims asserted by clean-up workers, relating to their work at site of 9/11 terrorist attacks, i.e., the World Trade Center (WTC), or at landfill site, raised common issues of law or fact concerning events of

September 11, 2001, and therefore were the type of claims that Congress intended to preempt with original and exclusive federal jurisdiction under federal Air Transportation Safety and System Stabilization Act of 2001 (ATSSSA), which federal jurisdiction was a basis for removal from state court to **federal court**, and which exclusive jurisdiction precluded remand to state court. In re World Trade Center Disaster Site Litigation, S.D.N.Y.2006, 467 F.Supp.2d 372. Removal Of Cases 25(1); Removal Of Cases 102; States 18.15; United States 417(3)

Action arising out of airplane crash was not removable from state to **federal court** on theory that federal question was involved where involvement of federal question was at most merely incidental. Morrison v. Jack Richards Aircraft Co., W.D.Okla.1971, 328 F.Supp. 580. Removal Of Cases 19(1)

---- Federal Aviation Act, aviation and air transportation, federal question in particular acts and claims

Plaintiff's state law claims, including false arrest, unlawful imprisonment, and intentional and negligent infliction of emotional distress, did not necessarily raise a disputed federal issue as result of those claims arising from plaintiff's alleged violation of federal aviation security regulations prohibiting unauthorized individuals from boarding an aircraft and requiring airlines to notify law enforcement of potential security breach onboard an aircraft, as would support **federal court's** jurisdiction over plaintiff's removed action against airline for allegedly causing his arrest after granting him a gate pass to assist his family onto an aircraft; airline merely raised as defense Aviation and Transportation Security Act's (ATSA) immunity provision, and plaintiff's right to relief on his state law claims did not depend on ATSA's immunity provision. Belmont v. JetBlue Airways Corporation, E.D.N.Y.2019, 401 F.Supp.3d 348. Damages 57.15; Damages 57.22

Federal Aviation Act (FAA) does not completely preempt all state court jurisdiction over claims that concern aviation safety; Congress has never expressly provided for removal of aviation safety claims to **federal court**, and the FAA does not provide its own exclusive cause of action for private litigants. O.S. ex rel. Sakar v. Hageland Aviation Services, Inc., D.Alaska 2008, 609 F.Supp.2d 889. Action 3; Aviation 322; Carriers 311; Removal Of Cases 25(1); States 18.17

Federal Aviation Act of 1958 (FAA) did not preempt airplane owner's negligence claim against aviation company for damage to the plane allegedly caused by aviation company's improper inspection and maintenance of the plane, and thus, the negligence claim did not present a federal question and did not support removal of airplane owner's action from state to **federal court**. Skydive Factory, Inc. v. Maine Aviation Corp., D.Me.2003, 268 F.Supp.2d 61. Aviation 322; Removal Of Cases 25(1); States 18.17

Federal Aviation Act of 1958 (FAA) did not preempt airplane owner's breach of contract claim against aviation company for damage to the plane allegedly caused by aviation company's improper inspection and maintenance of the plane, and thus, the contract claim did not present a federal question and did not support removal of airplane owner's action from state to **federal court**. Skydive Factory, Inc. v. Maine Aviation Corp., D.Me.2003, 268 F.Supp.2d 61. Aviation 319; Removal Of Cases 25(1); States 18.17

Preemption provision of Aviation Act, which only arguably contained civil enforcement provision, merely created federal defense to plaintiffs' claims under state law arising out of air disaster alleging fraud, consumer fraud and breach of contract based upon airline's failure to provide adequate security system, and thus, state law claims were not rendered federal in nature under complete preemption doctrine justifying **removal** to **federal court**. Vail v. Pan Am Corp., D.N.J.1990, 752 F.Supp. 648. Aviation 312; Removal Of Cases 25(1); States 18.17

---- Warsaw Convention, aviation and air transportation, federal question in particular acts and claims

Personal injury claims brought under state law, arising out of airplane crash occurring in Panama, were completely preempted by Warsaw Convention would be deemed to have arisen under federal law, and could be **removed** to **federal court**. Luna v.

Compania Panamena De Aviacion, S.A., S.D.Tex.1994, 851 F.Supp. 826. International Law 305; Removal Of Cases 25(1)

Action arising out of accident that allegedly occurred on flight from New Jersey to England arose under Warsaw Convention providing state and **federal courts** with concurrent jurisdiction over matter, and thus action was properly removable. French v. People Exp. Airlines, Inc., S.D.N.Y.1987, 671 F.Supp. 288. Removal Of Cases 19(5)

Banking claims, federal question in particular acts and claims--Generally

Suit against bank which assumed liabilities of insolvent national bank to recover state tax on shares for which insolvent bank was liable as stockholders' agent was not within jurisdiction of **federal court** as case arising "under the Constitution or laws of the United States" on theory that state tax was void unless permitted by federal law, since right to be established was one created by state and dispute as to whether federal law had been infringed was doubtful and conjectural. Gully v. First Nat. Bank, U.S.Miss.1936, 57 S.Ct. 96, 299 U.S. 109, 81 L.Ed. 70. **Federal Courts** 2276; **Removal** Of Cases 18; Removal Of Cases 19(7)

District court lacked jurisdiction over class action against savings and loan association to recover interest on funds held in escrow, which action was brought in state court and **removed** to **federal court**, because suit did not arise under federal law or an act of Congress regulating commerce, despite contention that federal law preempted state claim. Guinasso v. Pacific First Federal Sav. and Loan Ass'n, C.A.9 (Or.) 1981, 656 F.2d 1364, certiorari denied 102 S.Ct. 1716, 455 U.S. 1020, 72 L.Ed.2d 138. Removal Of Cases 25(1)

---- Due on sale clauses, banking claims, federal question in particular acts and claims

Action seeking declaratory and injunctive relief prohibiting federally chartered savings and loan association and another from exercising "due-on-sale" clauses in their lending instruments, which clauses could not automatically be enforced under state law, was not removable from state to **federal court** where in the complaint plaintiffs relied exclusively on state law and no federal question appeared on face of complaint and a federal question entered only by way of defense of federal preemption. People of State of Cal., By and Through Atty. Gen. v. Glendale Federal Sav. and Loan Ass'n, C.D.Cal.1979, 475 F.Supp. 728. Removal Of Cases 25(3)

---- Electronic Fund Transfer Act, banking claims, federal question in particular acts and claims

Although suit against a bank was brought under McKinney's Executive Law § 63, subd. 12 empowering Attorney General to seek relief for repeated or persistent fraud or illegality in transaction of business, **federal court** had jurisdiction with respect to cause of action alleging violations of Electronic Fund Transfer Act § 1693 et seq. of Title 15 in light of fact that federal questions presented in case were essential to controversy and federal jurisdiction was particularly appropriate since its provisions would be construed for first time. State of N.Y. by Abrams v. Citibank, N.A., S.D.N.Y.1982, 537 F.Supp. 1192. Removal Of Cases 20

---- Usury and improper fees, banking claims, federal question in particular acts and claims

Usury claim against national bank was federal in nature and was properly **removed** to **federal court**, although borrower claimed only violation of state usury statutes. M. Nahas & Co., Inc. v. First Nat. Bank of Hot Springs, C.A.8 (Ark.) 1991, 930 F.2d 608. Removal Of Cases 20

Pawn shop failed to establish that state-chartered, federally-insured bank was true lender in allegedly usurious payday loan transactions, and thus borrowers' state law claims against pawn shop were not **removable** to **federal court**, on complete

preemption grounds, under Depository Institutions Deregulation and Monetary Control Act (DIDA), where complaint did not assert any claim against bank, and pawn shop introduced no evidence of agreement between it and bank. Flowers v. EZPawn Oklahoma, Inc., N.D.Okla.2004, 307 F.Supp.2d 1191. Removal Of Cases 25(1)

For purposes of removal, state law usury claims challenging bank's late and overlimit fees on its credit cards were challenges to "interest" under Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDA) provisions establishing maximum interest rate for loans made by state-chartered, federally insured banks, and were properly **removable** to **federal court**. Hill v. Chemical Bank, D.Minn.1992, 799 F.Supp. 948. Removal Of Cases 20

---- Miscellaneous actions, banking claims, federal question in particular acts and claims

Suit challenging dividend declared by national banking association as violation of Ala. Code 1975, § 5-5-17, which prohibited state bank from owning more than ten percent of the capital stock of another bank was one challenging ownership solely under state law, rather than one calling for interference with operations of a national bank, and therefore, **federal courts** lacked jurisdiction and remand of removed case to state court was required. Maxwell v. First Nat. Bank of Monroeville, C.A.5 (Ala.) 1981, 638 F.2d 32. Removal Of Cases 102

Complaint by bank seeking, primarily, declaratory relief against foreign bank, in dispute over collateral of bankruptcy debtor, arising out of supplement to loan participation agreement, could not properly be **removed** to **federal court** where defenses bank would have raised to suit by defendant bank would have been same claims raised in complaint for declaratory judgment, which would include defense that supplement was void as causing bank to exceed federal lending limits, a federal question which would arise only as defense and could not, thus, be basis for exercise of federal question jurisdiction. First Nat. Bank of Monroe v. Harris Trust & Sav. Bank, W.D.Wis.1987, 649 F.Supp. 1577. Removal Of Cases 25(1)

Civil rights claims, federal question in particular acts and claims--Generally

Defendants, properly sued for alleged deprivation of civil rights in a state court of competent jurisdiction, did not have right to select forum for adjudication of case by petitioning for **removal** to **federal court** in absence of an allegation that they could not secure a proper defense to action in state court. Young v. Board of Ed. of Fremont County School Dist., RE-3, D.C.Colo.1976, 416 F.Supp. 1139. Removal Of Cases 70

---- Americans with Disabilities Act, civil rights claims, federal question in particular acts and claims

Employee's case was **removable** to **federal court** on basis of added ADEA claim even though state and **federal courts** exercised concurrent jurisdiction over ADEA claims, as ADEA did not expressly prohibit removal. Shilling v. Northwestern Mut. Life Ins. Co., D.Md.2006, 423 F.Supp.2d 513. Removal Of Cases 13; Removal Of Cases 19(5)

Employee's claim of wrongful discharge under Maryland law, though based on an alleged violation of the Americans with Disabilities Act (ADA), could not be **removed** to **federal court** on federal question grounds; employee was procedurally barred from pursuing an ADA claim because he had not exhausted administrative remedies, and therefore, federal element of state law claim was rendered insubstantial. Danfelt v. Board of County Com'rs of Washington County, D.Md.1998, 998 F.Supp. 606. Removal Of Cases 19(1)

---- Sections 1981 and 1983, civil rights claims, federal question in particular acts and claims

Action alleging that state corrections employees who were responsible for postrelease supervision of parolee were liable under § 1983 of Title 42, for failing to reincarcerate parolee who subsequently committed criminal acts against plaintiffs and alleging

that employee's actions violated state law imposing ministerial duty upon employees to reincarcerate parolee upon violation of terms of parole was properly **removed** to **federal court** where claims arose from common nucleus of operative facts and alleged single wrong. Fox v. Custis, C.A.4 (Va.) 1983, 712 F.2d 84. Removal Of Cases 58

Plaintiff's filing of motion to remand the removed action did not deprive the district court of subject matter jurisdiction to grant, as conceded based on plaintiff's failure to respond, defendants' motion to dismiss; plaintiff's pleading of multiple claims under § 1983 provided basis for federal question jurisdiction and for removal, and plaintiff's decision to invoke federal law subjected plaintiff to the possibility that defendants would remove the case to **federal court**. Sheikh v. District of Columbia, D.D.C.2014, 52 F.Supp.3d 22, motion to reopen denied 305 F.R.D. 16. Removal of Cases 19(1); Removal of Cases 107(.5); Removal of Cases 108

Arrestee's state court suit against city and officers, alleging violations of his constitutional rights in contravention of § 1983, arose from federal statute, allowing removal of both § 1983 claim and related state tort claims. Jimenez v. New Jersey, D.N.J.2003, 245 F.Supp.2d 584. **Federal Courts** 2546; **Removal** Of Cases 19(1)

State sovereign immunity precluded federal jurisdiction over § 1983 civil rights suit alleging that county sheriff violated Fourth Amendment and due process by devising and executing plan for nighttime search of residence and, thus, suit could not be **removed** to **federal court**. Miles v. Kilgore, N.D.Ala.1996, 928 F.Supp. 1071. **Federal Courts** 2386(2); **Removal** Of Cases 11

Removal of action by defendants was proper under first two subsections of federal removal statute, allowing removal when district court has original jurisdiction founded on a federal question, in civil case involving a shooting and killing by a police officer; district court had original jurisdiction over claims of decedent's personal representative under Court's federal question jurisdiction since two of the counts were civil rights claims under § 1983, and under doctrine of supplemental jurisdiction since other claims and federal law claims derived from a common nucleus of operative fact, and thus, formed part of the same case or controversy. Padilla v. City of Saginaw, E.D.Mich.1994, 867 F.Supp. 1309. **Federal Courts** 2544; **Removal** Of Cases 19(1)

State courts civil rights action brought under § 1983 was **removable** to **federal court**. Doran v. City of Clearwater, Fla., M.D.Fla.1993, 814 F.Supp. 1077. Removal Of Cases 70

Although state court had concurrent jurisdiction with **federal court** over case under § 1983 of Title 42, case could be removed from state court to **federal court** and motion to remand would be denied. Routh v. City of Parkville, Mo., W.D.Mo.1984, 580 F.Supp. 876. Removal Of Cases 19(1)

City's state court injunction action complaining of alleged illegalities during union organizing campaign among city employees was not **removable** to **federal court** on ground that complaint stated a claim on behalf of city employees under Civil Rights Act, § 1983 of Title 42, in that city was trying to protect rights of employees not to associate with the union and relied on U.S.C.A. Const. Amend. 1, since complaint nowhere referred to federal law and city explicitly disclaimed such reliance and, regardless of its merit, city stated a "colorable" state law basis for the action, that is, state constitutional protection of right of assembly and statutory right to work provisions. City of Winston-Salem v. Chauffeurs, Teamsters & Helpers Local Union No. 391, M.D.N.C.1979, 470 F.Supp. 442. Removal Of Cases 70

Police officer's suit against citizen in state court for malicious prosecution, based on dismissal of citizen's earlier **federal court** suit against officer for alleged violation of Civil Rights Act of 1871, § 1983 of Title 42, was one arising under laws of United States for removal purposes, and was therefore properly removed to federal district court. Sweeney v. Abramovitz, D.C.Conn.1978, 449 F.Supp. 213. Removal Of Cases 19(1)

---- Title VII, civil rights claims, federal question in particular acts and claims

Plaintiff's former employer, who had been named along with her former supervisor as defendants in state law sexual assault, battery and failure to maintain safe workplace action, could not remove plaintiff's state court action to **federal court** simply because same facts underlying plaintiff's state law claims might also have supported Title VII claim; plaintiff had drafted her complaint to state purely state law causes of action, whose resolution did not depend on any substantial question of federal law. Mathews v. Anderson, M.D.Ga.1993, 826 F.Supp. 479. Removal Of Cases 25(1)

---- Miscellaneous actions, civil rights claims, federal question in particular acts and claims

Public school teacher's claim against school board and school officials relating to teacher's termination for refusing to comply with board's order to use transgender student's preferred pronouns did not necessarily raise substantial federal question, thus precluding removal from state court to **federal court** based on federal question jurisdiction for claim brought under Virginia's Dillon Rule, providing that local governments have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable, as applied to Virginia statute prohibiting discrimination, even though Title IX could potentially be raised as a defense; Title IX question was not a necessary element of claim. Vlaming v. West Point School Board, C.A.4 (Va.) 2021, 10 F.4th 300. Removal of Cases 19(1)

There was no federal-question removal jurisdiction over employee's discrimination claims against employer and supervisor under Michigan's Elliot Larsen Civil Rights Act (ELCRA) based on the alleged need for the court to interpret employee's collective bargaining agreement (CBA) to determine whether he was treated differently than similarly-situated employees outside his protected class, even if such claims could be preempted by the LMRA; state law controlled the issue of whether employee's ELCRA claims required interpreting the CBA, and under Michigan law, the LMRA did not preempt ELCRA discrimination claims against an employer even if the CBA included a provision designed to protect employees from race and gender discrimination. Castanon v. United Parcel Service, Inc., E.D.Mich.2022, 2022 WL 3716037. Civil Rights 1703; **Federal Courts** 3074(8); **Removal** of Cases 25(1); States 18.23

Action alleging that districting plans enacted by North Carolina General Assembly for North Carolina House of Representatives and Senate violated North Carolina Constitution did not arise under federal law, and thus was not **removable** to **federal court** on basis of federal question jurisdiction, despite state legislators' assertion of conflict with federal law. Common Cause v. Lewis, E.D.N.C.2019, 358 F.Supp.3d 505, affirmed 956 F.3d 246. Removal of Cases 19(1)

Action wherein taxpayer sought injunctive relief against local school board to prevent sale of property at a public auction because of an allegedly inadequate appraisal and inclusion of an allegedly unlawful restrictive clause in notice of sale involved questions of state law and was not **removable** to **federal court**, even though a defense based on federal law was raised, where school board did not demonstrate that a right under any law providing for equal civil rights of citizens would be denied or could not be enforced in state court and, further, did not demonstrate that they had been authorized to act with or for federal officers in affirmatively executing duties under any federal law providing for equal civil rights. Tucker v. Cleveland Bd. of Ed., N.D.Ohio 1979, 465 F.Supp. 687. Removal Of Cases 25(1)

Communications claims, federal question in particular acts and claims--Generally

Because federal law preempted state law in area of interstate telecommunications, district court had federal question jurisdiction over state's action, brought in state court, against provider of long-distance telephone service to pay telephones and provider's agent, contending that defendants switched primary interexchange carrier (PIC) for pay telephones to provider without adequate authorization from telephone owner, alleging violation of Vermont Consumer Fraud Act and Federal Communications Commission (FCC) guidelines and, thus, removal of action to **federal court** was proper; because federal law preempted state

law in area, case arose under laws of United States. State of Vt. v. Oncor Communications, Inc., D.Vt.1996, 166 F.R.D. 313. Removal Of Cases 25(1); States 18.81

---- Cable television, communications claims, federal question in particular acts and claims

Lawsuit against cable television service provider, that alleged breach of contract, common-law fraud, deceptive business practices, and unjust enrichment under New York law, was **removable** to **federal court** on federal question grounds, since customer's claims raised issue of whether provider violated federal statute that required providers without effective competition to offer uniform rates through geographic areas in which services were provided, questions raised involved aspects of complex federal regulatory scheme applicable to cable television rates, and that kind of suit was particularly unlikely to recur. Broder v. Cablevision Systems Corp., C.A.2 (N.Y.) 2005, 418 F.3d 187. Removal Of Cases 19(1)

Action in which cable television subscribers alleged that cable service operators had violated Kentucky Consumer Protection Act (KCPA) by improperly passing through Kentucky Public Service Corporation (KPSC) Tax directly to subscribers as a specific item on their bills was not completely preempted by federal Cable Television Consumer Protection and Competition Act, which does not create a parallel federal cause of action, and thus could not be **removed** to **federal court** on that basis. Shaw v. TCI/TKR of Northern Kentucky, Inc., W.D.Ky.1999, 67 F.Supp.2d 712. Removal Of Cases 25(1); States 18.81; Telecommunications 1505(5)

Administrative review procedures established by federal Cable Television Consumer Protection and Competition Act did not constitute federal remedy so as to provide district court with federal question jurisdiction over Commonwealth of Kentucky's action against cable television company, alleging violations of Kentucky Consumer Protection Act, contending that company provided customers with unrequested cable services through negative option billing; while such procedures might afford aggrieved customers mechanism for redress, they could not be basis for **federal court** jurisdiction. Com. of Ky. ex rel. Gorman v. Comcast Cable of Paducah, Inc., W.D.Ky.1995, 881 F.Supp. 285. Removal Of Cases 25(1)

Action by franchisor of cable television firm alleging breach of franchise agreement and violations of state statute was not **removable** to **federal court** due to lack of federal law as a necessary element of the claim; defense based on alleged preemption by federal law became relevant only as a defense to obligations created entirely by state law. Town of Norwood v. Adams-Russell Co., Inc., D.Mass.1986, 627 F.Supp. 742. Removal Of Cases 25(1)

---- Cell phones, communications claims, federal question in particular acts and claims

Telecommunications Act (TCA), governing wireless telecommunications facilities, did not completely preempt state law claims that municipality did not follow required procedures for notice and hearing, before granting variance allowing for placement of antenna on power utility pole, even though variance was granted in compliance with **federal court** injunction issued under TCA. Russell's Garden Center, Inc. v. Nextel Communications of Mid-Atlantic, Inc., D.Mass.2003, 296 F.Supp.2d 13, motion granted 2005 WL 858045, entered 2005 WL 858034, affirmed 854 N.E.2d 463, 67 Mass.App.Ct. 1108, review denied 857 N.E.2d 1095, 447 Mass. 1115. **Federal Courts** 2293; Zoning And Planning 1030

For purposes of determining whether customers' claim against cellular telephone company under New Jersey law, alleging unjust enrichment, arising from company's billing practices, was subject to complete preemption doctrine so as to render claim **removable** to **federal court** under federal-question jurisdiction, claim fell within general scope of Communications Act's general enforcement provision, where customers were attacking company's billing practices of billing for noncommunications time and charging for time in whole-minute increments. DeCastro v. AWACS, Inc., D.N.J.1996, 935 F.Supp. 541, appeal dismissed 940 F.Supp. 692. Removal Of Cases 25(1); States 18.81; Telecommunications 1513

---- Federal Communications Act, communications claims, federal question in particular acts and claims

State-law claim that municipal franchise fees imposed on cable operators were illegal tax under Iowa law to extent they exceeded costs of regulation did not "arise under" Federal Cable Communications Policy Act, so as to render removal under federal question jurisdiction proper, although provisions of the Federal Cable Communications Policy Act were asserted by cities as defenses to state law violations alleged; federal law did not completely occupy field, federal questions, while relevant, were not disputed and substantial, and **federal court** decision on matters of state law would cause some disruption in balance of federal and state judicial responsibilities. Lindstrom v. City of Des Moines, IA, S.D.Iowa 2007, 470 F.Supp.2d 1002, appeal after remand from **federal court** 784 N.W.2d 200, rehearing denied, appeal after remand from **federal court** 789 N.W.2d 634. Removal Of Cases 25(1)

Customers' common-law claims against long-distance telephone company, alleging that company fraudulently concealed its practice of billing for residential service per minute rounded up to next full minute, arose under federal law and, thus, there was federal subject matter jurisdiction and customers' complaint was properly removed from state court to **federal court**; customers challenged on fraud-based grounds rates charged by company, and sought refund of part of those rates in contravention of Communications Act provision governing overcharges and rebates. Marcus v. AT & T Corp., S.D.N.Y.1996, 938 F.Supp. 1158, affirmed 138 F.3d 46. Removal Of Cases 19(1)

Plaintiff's state law breach of contract claim against long distance telephone company was not preempted by Communications Act, and thus case was not **removable** to **federal court**. American Inmate Phone Systems, Inc. v. US Sprint Communications Co. Ltd. Partnership, N.D.Ill.1992, 787 F.Supp. 852. Removal Of Cases 25(1)

State's complaint against provider of long-distance telephone service to pay telephones and provider's agent did not set forth on its face claim that Federal Communications Act (FCA) had been violated so as to allow for **removal** to **federal court** of state's action, contending that defendants switched primary interexchange carrier (PIC) for pay telephones to provider without adequate authorization from telephone owner, alleging violation of Vermont Consumer Fraud Act and Federal Communications Commission (FCC) guidelines; although federal issue of violation of guidelines appeared as element of state cause of action, it did not appear that some substantial, disputed question of federal law was necessary element of one of well-pleaded state claims or that claim was really one of federal law. State of Vt. v. Oncor Communications, Inc., D.Vt.1996, 166 F.R.D. 313. Removal Of Cases 25(1)

---- Telephone Consumer Protection Act, communications claims, federal question in particular acts and claims

State courts had exclusive jurisdiction over private cause of action under Telephone Consumer Protection Act (TCPA) for sending unsolicited faxes, and thus TCPA case could not be **removed** to **federal court** on basis of diversity of citizenship. Consumer Crusade, Inc. v. Fairon and Associates, Inc., D.Colo.2005, 379 F.Supp.2d 1132. Courts 489(9); Removal Of Cases 29

---- Miscellaneous actions, communications claims, federal question in particular acts and claims

Complaint alleging that defendants who sold radio stations had committed fraud in misrepresenting compliance with Federal Communications Commission regulations was not one founded on federal right, where it appeared to require only mathematical application, and not interpretation, of the regulations. WYDE, Inc. v. Bartell Broadcasting Corp., S.D.N.Y.1961, 199 F.Supp. 773. **Federal Courts** 2351(1)

---- Miscellaneous actions, condemnation and eminent domain, federal question in particular acts and claims

Where complaint was adequate to assert a right of condemnation under Gen.Stats.1951 §§ 1072b to 1089b, and value of the easement sought was the only dispute disclosed in complaint, action against a citizen of Connecticut commenced in state court to condemn an easement for natural gas transmission facilities was not removable to federal district court, though **federal court** would have had original jurisdiction of action, since it was not founded on a right arising under laws of United States within meaning of this section. Algonquin Gas Transmission Co. v. Gregory, D.C.Conn.1952, 105 F.Supp. 64. Removal Of Cases 25(1)

Consumer protection, federal question in particular acts and claims--Generally

Resolution in **federal court** of lawsuit alleging numerous claims under Kentucky law arising out of the use of a bio-engineered liquid bone graft product during a lumbar spinal fusion surgery would disrupt the federal-state balance approved by Congress, weighing against removal; Congress had chosen neither to permit federal jurisdiction, nor to completely preclude state jurisdiction, over claims alleging violations of the Medical Device Amendments (MDA) to the Food, Drug and Cosmetic Act (FDCA), and the Supreme Court had indicated its unwillingness to open up **federal courts** to all state law tort claims involving medical devices. Schilmiller v. Medtronic, Inc., W.D.Ky.2014, 44 F.Supp.3d 721. Removal of Cases 19(1)

Resolution in **federal court** of lawsuit alleging numerous claims under Kentucky law arising out of the use of a bio-engineered liquid bone graft product during a spinal fusion surgery would disrupt the federal-state balance approved by Congress, weighing against removal; Congress had chosen neither to permit federal jurisdiction, nor to completely preclude state jurisdiction, over claims alleging violations of the Medical Device Amendments (MDA) to the Food, Drug and Cosmetic Act (FDCA), and the Supreme Court had indicated its unwillingness to open up **federal courts** to all state law tort claims involving medical devices. Miller v. Medtronic, Inc., W.D.Ky.2014, 41 F.Supp.3d 644. Removal of Cases 19(1)

Resolution in **federal court** of lawsuit alleging numerous claims under Kentucky law arising out of the use of a bio-engineered liquid bone graft product during a spinal fusion surgery would disrupt the federal-state balance approved by Congress, weighing against removal; Congress had chosen neither to permit federal jurisdiction, nor to completely preclude state jurisdiction, over claims alleging violations of the Medical Device Amendments (MDA) to the Food, Drug and Cosmetic Act (FDCA), and the Supreme Court had indicated its unwillingness to open up **federal courts** to all state law tort claims involving medical devices. Goffner v. Medtronic, Inc., W.D.Ky.2014, 41 F.Supp.3d 604. Removal of Cases 19(1)

Claim that manufacturer of prescription antipsychotic medicine violated the Kentucky Consumer Protection Act (KCPA) by misplacing risk information on the drug's label, among other things, did not implicate a substantial federal interest, as would weigh against the exercise of federal jurisdiction on removal, where was no challenge to the Food and Drug Administration's (FDA) approval of the drug's label, the interpretation of the FDCA was only one part of a larger state-law claim, resolution of the federal question was not dispositive of the KCPA claim, and the FDA would be unaffected by the resolution of the claim in state court, as opposed to **federal court**. Kentucky ex rel. Conway v. Janssen Pharmaceuticals, Inc., W.D.Ky.2013, 978 F.Supp.2d 788. Removal of Cases 19(1)

---- Food Drug and Cosmetic Act, consumer protection, federal question in particular acts and claims

Consumers' state court action against drug manufacturer, based in part on theory that manufacturer's alleged violation of Federal Food, Drug, and Cosmetic Act constituted negligence, did not present federal question, so that removal of the action to **federal court** was improper, in light of congressional determination to preclude private federal remedies for violation of FDCA. Merrell Dow Pharmaceuticals Inc. v. Thompson, U.S.Ohio 1986, 106 S.Ct. 3229, 478 U.S. 804, 92 L.Ed.2d 650. Removal Of Cases 19(1)

Resolution in **federal court** of lawsuit alleging numerous claims under Kentucky law arising out of the use of a bio-engineered liquid bone graft product during a lumbar spinal fusion surgery would disrupt the federal-state balance approved by Congress,

weighing against removal; Congress had chosen neither to permit federal jurisdiction, nor to completely preclude state jurisdiction, over claims alleging violations of the Medical Device Amendments (MDA) to the Food, Drug and Cosmetic Act (FDCA), and the Supreme Court had indicated its unwillingness to open up **federal courts** to all state law tort claims involving medical devices. Hubbard v. Medtronic, Inc., W.D.Ky.2014, 41 F.Supp.3d 614. Removal of Cases 19(1)

Consumer's state-court action against drug manufacturer, alleging failure to warn of drug's harmful effects in violation of New Jersey Products Liability Act (NJPLA), did not present substantial federal question, so as to permit removal; consumer's cause of action did not require proof of violation of federal law as essential element to recovery, and even assuming that substantial federal issues were raised, opening federal forum to consumer's claim would shift traditionally state cases into **federal courts**. Sullivan v. Novartis Pharmaceuticals Corp., D.N.J.2008, 575 F.Supp.2d 640. Removal Of Cases 19(1)

Medical Device Amendments to Federal Food, Drug, and Cosmetic Act (MDA) do not provide basis for determination that state law products liability claim is federal in nature, and may be **removed** to **federal court**; MDA does not create private right of action, as would render claim brought by recipient of implant federal claim under complete preemption doctrine, and does not create kind of blanket preemption of state law claims as to render state claims federal in nature. McQuerry v. American Medical Systems, Inc., N.D.Ill.1995, 899 F.Supp. 366. Removal Of Cases 25(1)

Complaint seeking relief for unfair competition and unfair business practices even though referring to § 361 of Title 21 to establish a basis for equitable relief based on claim of irreparable injury which might arise from in rem seizure of its products under such section did not allege a substantial claim founded directly on federal law, and therefore doctrine of pendent jurisdiction was inapplicable, and case was not removable on theory plaintiff's complaint was founded on a claim of right arising under laws of United States. Clairol Inc. v. Suburban Cosmetics & Beauty Supply, Inc., N.D.Ill.1968, 278 F.Supp. 859. **Federal Courts** 2351(1); **Federal Courts** 2550; **Removal** Of Cases 25(1)

Contract claims, federal question in particular acts and claims

Public school teacher's claims against school board and school officials based on Virginia Constitution's free speech and due process provisions relating to teacher's termination for refusing to comply with board's order to use transgender student's preferred pronouns did not necessarily raise substantial federal questions, thus precluding removal from state court to **federal court** based on federal question jurisdiction, even though Virginia's free speech and due process clauses are coextensive with their analogous federal constitutional provisions; nothing prevented teacher from prevailing on state constitutional claims on exclusively state grounds, court could not speculate how state court would resolve state constitutional claim, and state was not required to rely on federal law. Vlaming v. West Point School Board, C.A.4 (Va.) 2021, 10 F.4th 300. Removal of Cases 18

Public school teacher's claims against school board and school officials based on Virginia Constitution's free speech and due process provisions relating to teacher's termination for refusing to comply with board's order to use transgender student's self-identified pronouns did not necessarily raise substantial federal questions, thus precluding removal from state court to **federal court** based on federal question jurisdiction, even though Virginia's free speech and due process clauses are coextensive with their analogous federal constitutional provisions; nothing prevented teacher from prevailing on state constitutional claims on exclusively state grounds, court could not speculate how state court would resolve state constitutional claim, and state was not required to rely on federal law. Vlaming v. West Point School Board, C.A.4 (Va.) 2021, 10 F.4th 300. Removal of Cases 18

Energy and utility auditing and consulting firm's breach of contract action against city did not seek to attack, unravel, or set aside any provision of a prior **federal court** settlement, as would permit the exercise of federal jurisdiction over the state-law, non-diverse case on removal, where firm's action concerned an independent contract dispute in which firm sought 20% of the city's settlement proceeds. Energy Management Services, LLC v. City of Alexandria, C.A.5 (La.) 2014, 739 F.3d 255. **Federal Courts** 2553

Resident corporation was real party in interest in breach of contract action, and thus nonresident company could not remove action against them to **federal court**, even though plaintiffs had alleged that resident corporation was alter ego of nonresident company, and resident corporation had filed bankruptcy petition under Chapter 7, where companies had denied that resident corporation was alter ego of nonresident company, and resident corporation would continue its corporate existence and remain subject to legal proceedings in its corporate name after its dissolution in bankruptcy. Sutton Woodworking Mach. Co., Inc. v. Mereen-Johnson Mach. Co., M.D.N.C.2004, 328 F.Supp.2d 601. Removal Of Cases 29

Constitutional claims, federal question in particular acts and claims

Arrestee's § 1983 claim, which alleged that two city police departments violated his Fourth Amendment rights by arresting him without probable cause and using excessive force during arrest, asserted federal question capable of creating federal-question jurisdiction, for purposes of **removal** to **federal court**. Donaldson v. City of Walterboro Police Dept., D.S.C.2006, 466 F.Supp.2d 677. Removal Of Cases 19(1)

Deputy city police commissioner's action against city and mayor did not raise federal question, and thus could not be **removed** to **federal court**, since only reference to constitution in deputy commissioner's complaint was to Pennsylvania Constitution. Mitchell v. Street, E.D.Pa.2004, 310 F.Supp.2d 724. Removal Of Cases 25(1)

Because due process inquiry with respect to issue of personal jurisdiction under LSA-R.S. 13:3201 was a question of federal constitutionality, **federal court** was an appropriate forum in which to hear issue on removal of suit from state court. Schwegmann Bros. Giant Super Markets, Inc. v. Pharmacy Reports, Inc., E.D.La.1980, 486 F.Supp. 606. **Federal Courts** 2324(3)

That defendants in a state court action to have them enjoined from carrying on certain demonstration activities in a municipality might have had a cause of action to redress deprivation of privileges or immunities secured by U.S.C.A.Const. Amend. 14, § 1, did not make the state court action removable as a civil action of which **federal court** had original jurisdiction. State of Ala. ex rel. Flowers v. Robinson, N.D.Ala.1963, 220 F.Supp. 293. Removal Of Cases 18

Alleged violation of constitutional rights, resulting from state court order compelling petitioner to submit to examination by psychiatrist as to his mental competency, did not entitle him to have **removed** to **federal court** proceeding instituted to have him adjudged mentally incompetent. In re Stuart, W.D.Mich.1956, 143 F.Supp. 772. Removal Of Cases 18

Copyright claims, federal question in particular acts and claims

Rights that music group sought to assert in state law contract and tort claims against video game manufacturer were not copyrightable, and therefore, claims were not preempted by federal law as required for removal, where group claimed manufacturer used group members' names, images and likeness in a way that was outside their contract. No Doubt v. Activision Publishing, Inc., C.D.Cal.2010, 702 F.Supp.2d 1139, appeal after remand from **federal court** 122 Cal.Rptr.3d 397, 192 Cal.App.4th 1018, 98 U.S.P.Q.2d 1728, review denied. Copyrights And Intellectual Property 214; Removal Of Cases 25(1); States 18.87

State court action involving quiet title claim that required declaration of parties' rights in property bearing disputed image, and therefore judgment on validity of copyright claims regarding that image, was **removable** to **federal court**. Pebble Creek Homes, LLC v. Upstream Images, LLC, D.Utah 2007, 547 F.Supp.2d 1214. Removal Of Cases 19(1)

Complaint alleging state law claims that were completely preempted by Copyright Act was properly **removed** to **federal court**. Patrick v. Francis, W.D.N.Y.1995, 887 F.Supp. 481. Removal Of Cases 25(1)

Plaintiff's use of word "publication" in cause of action was not determinative of whether there was federal jurisdiction on theory that a claim under Title 17 was thereby stated and action was not on that basis **removable** to **federal court**. Hearst Corp. v. Shopping Center Network, Inc., S.D.N.Y.1969, 307 F.Supp. 551, 165 U.S.P.Q. 51. **Federal Courts** 2351(1); **Removal** Of Cases 19(1)

Declaratory judgments, federal question in particular acts and claims

A state court declaratory judgment action brought with purpose of forcing party to accelerate a federal lawsuit is within original jurisdiction of **federal courts** for **removal** purposes as an action based on federal law; it does not merely anticipate a federal defense; otherwise a potential defendant could impede a plaintiff's right to proceed in **federal court** simply by bringing a declaratory judgment against him in state court first. Thomas v. Shelton, C.A.7 (Ind.) 1984, 740 F.2d 478. Removal Of Cases 11

Requested declaration that certain trademark applications which plaintiff had pending should be granted, that defendant's opposition should be dismissed and that any trademark application on file by defendant should be denied did not present an actual controversy which would be a proper subject for decision under federal Declaratory Judgment Act, § 2201 of this title, and, hence, such request furnished no basis for removal of action from state to **federal court** under federal question provision of this section. American Brahmental Ass'n v. American Simmental Ass'n, W.D.Tex.1977, 443 F.Supp. 163. Declaratory Judgment 237; Removal Of Cases 25(1)

Defamation and libel claims, federal question in particular acts and claims

Federal statute allowing for **removal** to **federal court** of a state case involving a separate or independent state claim, provided that a jurisdictionally sufficient federal question claim was present, did not apply to allow **removal** to **federal court** of a state law defamation action simply on the basis of the existence of a related case between the same parties that was then pending in **federal court**. Nagler v. Illiano, E.D.N.Y.2008, 585 F.Supp.2d 358. Removal Of Cases 49.1(6)

Defamation action against foundation trustees by township commissioners did not "arise under" federal civil rights statutes so as to make removal proper based on **federal court's** original jurisdiction over claim, though trustees alleged defamation suit was a retaliatory action designed to deter their § 1983 civil rights action against commissioners; defamation claim could be resolved without any reference to a federal statute, and crux of defamation action stemmed from statements of trustees published in a newspaper, rather than from trustees' filing of civil rights complaint. Davis v. Glanton, E.D.Pa.1996, 921 F.Supp. 1421, affirmed 107 F.3d 1044, rehearing and suggestion for rehearing in banc denied, certiorari denied 118 S.Ct. 159, 522 U.S. 859, 139 L.Ed.2d 103. Removal Of Cases 19(1)

In spite of fact that radio broadcasters are subject to federal regulation, defamation action against broadcaster who allegedly made false and defamatory statements about plaintiff during a news broadcast did not arise under federal law and thus federal district courts did not have subject-matter jurisdiction over action. Buice v. Buford Broadcasting, Inc., N.D.Ga.1983, 553 F.Supp. 388. **Federal Courts** 2293

Depository Institutions Deregulation and Monetary Control Act, federal question in particular acts and claims

Depository Institutions Deregulation and Monetary Control Act (DIDA) did not completely preempt claims by Administrator of Colorado Uniform Consumer Credit Code against Colorado supervised lender and non-bank affiliate, as assignees of loans from federally insured bank, alleging that lender and affiliate violated Colorado's statutory limits on excessive finance and delinquency charges as to certain consumer credit loans, so as to support removal of claim to **federal court**; assignees only had contractual relationship with federally insured bank, federally insured bank played only ephemeral role in making loans then immediately sold them, and assignees generally directed fees and activities that allegedly violated state law. Meade v.

Avant of Colorado, LLC, D.Colo.2018, 307 F.Supp.3d 1134. Finance, Banking, And Credit 15(1); Removal Of Cases 25(1); States 18.19

Domestic relations, federal question in particular acts and claims

Mother's claim against father for malicious prosecution, which was based on father's alleged initiation of child abuse complaints and the subsequent investigation by department of social services, fell within the domestic relations exception to federal jurisdiction, and thus, removal of that claim was improper, where child custody and visitation matters between the parties were still disputed, ongoing controversies. Griessel v. Mobley, M.D.N.C.2008, 554 F.Supp.2d 597. **Federal Courts** 2034; **Removal** Of Cases 19(1)

Education claims, federal question in particular acts and claims--Generally

Virginia statute, which permits Virginia court to grant appropriate relief in challenge to reviewing officer's decision regarding rights of handicapped student, was not preempted by Education of the Handicapped Act for purpose of artful pleading doctrine, and, thus, school boards' claims under Virginia law were governed by well-pleaded complaint rule and were not **removable** to **federal court**. Amelia County School Bd. v. Virginia Bd. of Educ., E.D.Va.1987, 661 F.Supp. 889. Removal Of Cases 25(1)

---- Individuals with Disabilities Education Act, education claims, federal question in particular acts and claims

Petition by city challenging order of state administrative law judge directing city to reimburse parent of autistic infant for money spent providing child with appropriate education pursuant to the IDEA, which was referred to in the petition, invoked federal law so as to be properly **removed** to **federal court**, though question superficially related to state statute concerning qualifications of personnel who provided the education, as interpretation of what constituted "appropriate" education under IDEA was at the root of the litigation and case could not be decided without reference to recent Supreme Court case that was controlling authority on precise issue and its interpretation of IDEA. Still v. DeBuono, S.D.N.Y.1996, 927 F.Supp. 125, affirmed 101 F.3d 888. Removal Of Cases 25(1)

Environmental claims, federal question in particular acts and claims--Generally

Clean Air Act (CAA) did not completely preempt state's claims against oil and gas companies for public nuisance, strict liability design defect, negligent design defect, negligent failure to warn, impairment of public trust resources, and violation of state's Environmental Rights Act, premised on their misleading public statements about fossil fuel products' true risks as cause of climate change, and thus complete preemption exception to well-pleaded complaint rule did not authorize removal of state's action to **federal court**; CAA provided that pollution prevention and air pollution control at its source was primary responsibility of state and local governments, and contained two savings clauses that expressly preserved non-CAA claims. Rhode Island v. Shell Oil Products Co., L.L.C., C.A.1 (R.I.) 2022, 35 F.4th 44. Environmental Law 171; Nuisance 59; Products Liability 282; Public Lands 7; Removal of Cases 25(1); States 18.15; States 18.31; States 18.65; States 18.91

Clean Air Act (CAA), which allowed parties to seek stricter nationwide emissions standards by petitioning the Environmental Protection Agency (EPA), did not completely preempt state common-law claims asserted by city and two counties for public nuisance, private nuisance, trespass, and unjust enrichment, as would support removal based on federal question jurisdiction, in action seeking monetary damages from sellers of fossil fuels for injuries to plaintiffs' property and to their citizens, arising from defendants' role in allegedly exacerbating climate change; CAA was silent on monetary damages for harms caused by sale of fossil fuels, neither EPA action nor a cause of action against the EPA could provide the compensation sought by plaintiffs for injuries suffered as result of sellers' actions, and CAA expressly preserved many state common-law causes of action, including

tort actions for damages. Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc., D.Colo.2019, 405 F.Supp.3d 947. **Federal Courts** 2217

Removal of action brought by residents of unincorporated community against manufacturer of high-technology products and its subsidiary and mining company, alleging their six-month old daughter was legally blind as a result of optic nerve glioma caused by exposure to ionizing radiation contamination in the community from defendants' misuse or improper disposal of radionuclides, was proper under Price-Anderson Act. Cotromano v. United Technologies Corp., S.D.Fla.2014, 7 F.Supp.3d 1253. Removal of Cases 19(1)

---- CERCLA, environmental claims, federal question in particular acts and claims

For purposes of removal, landowners' state law negligence and strict liability claims against operator of waste disposal facilities and industrial generators of hazardous waste, alleging that defendants were responsible for contaminating owners' land with toxic chemicals, did not "arise under" CERCLA, despite fact that defendants were ordered in previous CERCLA action to clean up contamination from facility; Louisiana law also provided a cause of action in tort, CERCLA did not completely preempt landowners' claims, and landowners were entitled to rely exclusively on state law causes of action. MSOF Corp. v. Exxon Corp., C.A.5 (La.) 2002, 295 F.3d 485, certiorari denied 123 S.Ct. 623, 537 U.S. 1046, 154 L.Ed.2d 519, appeal after remand from **federal court** 934 So.2d 708, 2004-0988 (La.App. 1 Cir. 12/22/05), rehearing denied, writ denied 938 So.2d 78, 2006-1669 (La. 10/6/06), on remand 2008 WL 2625184. Removal Of Cases 19(1)

District Court could not remand to state court property owners' entire action against oil and gas company, alleging that company's drilling activities violated Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and asserting multiple state law claims, including breach of contract, misrepresentation, trespass, and negligence, as jurisdiction over CERCLA claim was exclusively in **federal courts**. May v. Apache Corp., S.D.Tex.2012, 870 F.Supp.2d 454, on remand 2013 WL 11332735. Courts 489(1); Removal of Cases 101.1

Administrative order on consent (AOC) between hazardous waste facility's owner and Environmental Protection Agency (EPA) did not establish federal subject matter jurisdiction over owner's state law claims against potentially responsible parties (PRP), and thus owner's action against PRPs could not be **removed** to **federal court**, even if AOC incorporated provisions of CERCLA, and protected PRPs from contribution actions or claims relating to matters addressed in AOC. Southeast Texas Environmental, L.L.C. v. BP Amoco Chemical Co., S.D.Tex.2004, 329 F.Supp.2d 853. Removal Of Cases 19(1)

---- Environmental Protection Act, environmental claims, federal question in particular acts and claims

Issue of federal preemption is merely a defense to state law claims, which cannot be a ground for **removal** to **federal court**; therefore, chemical corporation, in suit by State alleging that corporation's operation of facility storing radioactive wastes violated sections of Environmental Protection Act, Ill.S.H.A. ch. 100 ½, ¶26, ch. 111 ½, ¶1001 et seq., was not entitled to **removal** to **federal court** by raising issue of federal preemption as a defense. People of State of Ill. v. Kerr-McGee Chemical Corp., C.A.7 (Ill.) 1982, 677 F.2d 571, certiorari denied 103 S.Ct. 469, 459 U.S. 1049, 74 L.Ed.2d 618. Removal Of Cases 25(1)

---- Water pollution, environmental claims, federal question in particular acts and claims

Complaint by state alleging that chemical corporation's operation of facility storing radioactive wastes allegedly violated state law by improperly maintaining and disposing of solid and liquid hazardous wastes, by creating a water pollution hazard, by failing to register site in accordance with state regulations, and by creating a public nuisance, claims which were grounded in Illinois Environmental Protection Act, Ill.S.H.A. ch. 100 ½, ¶26, ch. 111 ½, ¶1001 et seq., pleaded only state causes of action and

did not raise a federal question justifying removal of case to **federal court**. People of State of Ill. v. Kerr-McGee Chemical Corp., C.A.7 (Ill.) 1982, 677 F.2d 571, certiorari denied 103 S.Ct. 469, 459 U.S. 1049, 74 L.Ed.2d 618. Removal Of Cases 25(1)

Plaintiffs' state court action alleging that city's operation of waste treatment plant violated their rights fell within federal district court's federal question jurisdiction, and thus removal of action to **federal court** was proper, where plaintiffs alleged that city violated their rights under federal constitution, and requested relief implicated terms of prior consent judgment between city and United States in **federal court** action under Clean Water Act. Berna v. City of Detroit, E.D.Mich.2006, 419 F.Supp.2d 954. Removal Of Cases 18

Plaintiff's action against nonresident chemical corporation and City of Memphis for injuries resulting from discharge of high levels of toxic chemicals into city waste water system was not **removable** to **federal court** on ground that plaintiff had concealed a federal question under Federal Water Pollution Control Act, § 1251 et seq. of Title 33, which gives **federal courts** exclusive jurisdiction over cases arising under it, in that the Environmental Protection Agency issued the corporation a permit granting its right to discharge certain amounts of specified chemicals into the city waste water system, where plaintiff's claims sounded only in tort, and no federal questions were presented or even vaguely implicated. Mabray v. Velsicol Chemical Corp., W.D.Tenn.1979, 480 F.Supp. 1240. Removal Of Cases 25(1)

ERISA, federal question in particular acts and claims--Generally

ERISA civil enforcement mechanism is one of those provisions with such extraordinary preemptive power that it converts ordinary state common law complaint into one stating federal claim for purposes of well-pleaded complaint rule; hence, causes of action within scope of civil enforcement provisions are **removable** to **federal court**. Aetna Health Inc. v. Davila, U.S.2004, 124 S.Ct. 2488, 542 U.S. 200, 159 L.Ed.2d 312, on remand 388 F.3d 167. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

Causes of action within the scope of, or that relate to, ERISA's civil enforcement provisions are **removable** to **federal court** despite the fact the claims are couched in terms of state law. Lyons v. Philip Morris Inc., C.A.8 (Minn.) 2000, 225 F.3d 909. Removal Of Cases 19(5)

Policyholder's parents' claim under Puerto Rico law against insurer to recover proceeds under life insurance policy sponsored by policyholder's employer was completely preempted by ERISA, and thus was subject to **removal** to **federal court**, even though complaint did not refer to ERISA. Quinones v. Sepulveda Perez, D.Puerto Rico 2017, 268 F.Supp.3d 318. Insurance 1117(1); Removal of Cases 25(1)

Approved out-of-network health care provider's claim that insurer was unjustly enriched as result of its failure to provide full payment on claims for health care services that it provided to participants in its ERISA health insurance plans implicated provider's right to payment, rather than amount of payment, for purposes of determining whether provider's state court action against insurer could be **removed** to **federal court** on basis of ERISA complete preemption, even though claims did not involve medical coverage determinations, where parties disputed whether provider had obligation under plan to collect deductible and coinsurance payments from plan participants and whether provider had to provide additional documentation to substantiate its assertion that it did collect payments from participants, and resolution of dispute would require court to interpret terms and requirements of ERISA-governed plans. Enigma Management Corp. v. Multiplan, Inc., E.D.N.Y.2014, 994 F.Supp.2d 290. Labor and Employment 407; Removal of Cases 25(1); States 18.51

Any civil action brought by a participant in, or beneficiary of, an employee benefit plan to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan is completely preempted by ERISA and **removable** to **federal court**. Davis v. Old Dominion Tobacco Co. Inc., E.D.Va.2010, 688 F.Supp.2d 466. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

ERISA civil enforcement mechanism is one of those provisions with such extraordinary preemptive power that it converts ordinary state common law complaint into one stating federal claim for purposes of the well-pleaded complaint rule; hence, causes of action within scope of ERISA civil enforcement provision are **removable** to **federal court**. LaFayette v. Cobb, D.N.M.2004, 385 F.Supp.2d 1152. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

ERISA conflict preemption may be used as a defense to a state law action, but it does not provide a basis for **removal** to **federal court**. Radcliff v. El Paso Corp., S.D.W.Va.2005, 377 F.Supp.2d 558. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

ERISA preemption, without more, does not convert a state claim into an action "arising under federal law," as would allow **removal** to **federal court**. Board of Trustees of Total Community Action, Inc. Employees' Retirement Plan and Trust v. Pan American Life Ins. Co., E.D.La.2000, 112 F.Supp.2d 602. Removal Of Cases 25(1)

Ordinarily, preemption of state law claim is merely a defense and does not support **removal** to **federal court** under the well-pleaded complaint rule, but ERISA preemption is so comprehensive in nature as to provide a basis for removal even though it is a defense. Jefferson Parish Hosp. Service Dist. No. 2, Parish of Jefferson, State of La. v. Principal Heath Care of Louisiana, Inc., E.D.La.1996, 934 F.Supp. 206. Removal Of Cases 25(1)

Removal to **federal court** based on ERISA is limited to causes of action that both "relate to" employee benefit plan and fall within ERISA's civil enforcement provisions and if party that has sought removal cannot establish that both parts of this two prong test are satisfied, **federal court** has no subject matter jurisdiction and must remand case back to state court. McDermott Food Brokers, Inc. v. Kessler, N.D.N.Y.1995, 899 F.Supp. 928. Removal Of Cases 19(5); Removal Of Cases 102

---- Complete preemption, ERISA, federal question in particular acts and claims

Approved out-of-network health care provider's claim that insurer was unjustly enriched as result of its failure to provide full payment on claims for health care services that it provided to participants in its ERISA health insurance plans did not implicate any legal duty independent of ERISA plans, for purposes of determining whether provider's state court action against insurer could be **removed** to **federal court** on basis of ERISA complete preemption, where provider's entitlement to payment from insurer arose solely from plan terms, and provider's agreement with preferred provider organization expressly allowed insurer to reduce payments "by any applicable deductibles, co-payments, co-insurance." Enigma Management Corp. v. Multiplan, Inc., E.D.N.Y.2014, 994 F.Supp.2d 290. Labor and Employment 407; Removal of Cases 25(1); States 18.51

ERISA's civil enforcement provision completely preempts state law claims that come within its scope and converts these state claims into federal claims. Feldman's Medical Center Pharmacy, Inc. v. CareFirst, Inc., D.Md.2012, 902 F.Supp.2d 771. **Federal Courts** 2263; Labor And Employment 407; States 18.51

The fact that a state-law claim may be preempted under ERISA does not provide a basis for removal of an action to **federal court**; rather, complete preemption under ERISA, and thus a proper basis for removal, only arises if a state-law claim can be recharacterized as a claim under ERISA's civil enforcement provision. Richards v. Appalachian Power Co., S.D.W.Va.2011, 836 F.Supp.2d 436. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

Former employee's claims against former employer for breach of contract and intentional infliction of emotional distress by firing employee allegedly to deny medical benefits to treat employee's seriously ill wife were not completely preempted by ERISA's civil enforcement provision, and, thus, suit was not subject to removal; the employee's family medical insurance coterminated with his employment, and he no longer had rights under any ERISA plan. Flagg v. Ali-Med, Inc., D.Mass.2010, 728 F.Supp.2d 1, appeal after remand from **federal court** 992 N.E.2d 354, 466 Mass. 23. Damages 57.6; Labor And Employment 407; Removal Of Cases 25(1); States 18.15; States 18.51

ERISA or LMRA completely preempted all of employee's state law claims against employer, which thus were properly **removed** to **federal court**; all counts in complaint incorporated allegation that employer terminated employee in order to save money on employee benefit plan, which implicated ERISA, wrongful discharge, breach of implied contract, and breach of implied covenant of good faith and fair dealing counts all would require court to interpret terms of labor agreement, negligent investigation count would require determination of whether employer breached its obligations under labor agreement, negligent infliction of emotional distress claim additionally would require court to examine whether employer acted reasonably under the circumstances, and defamation claim would require court to look at labor agreement, meaning they were LMRA-preempted. Rebaudo v. AT & T, D.Conn.2008, 562 F.Supp.2d 345. **Federal Courts** 2263; **Federal Courts** 2264(2); Labor And Employment 407; Labor And Employment 1243; Removal Of Cases 25(1); States 18.46; States 18.51

In ERISA context, state law claims are completely preempted and arise under federal law for removal purposes only when (1) state law claims "relate to" an ERISA plan within meaning of ERISA preemption provision, i.e., state law clams are subject to a conflict preemption defense, and claims fall within scope of ERISA civil enforcement scheme; if both conditions are not met, **federal court** does not have subject matter jurisdiction and matter should be remanded. Arora v. Hartford Life and Annuity Ins. Co., N.D.Cal.2007, 519 F.Supp.2d 1021. Labor And Employment 407; Removal Of Cases 25(1); Removal Of Cases 102; States 18.51

Former insurance company vice-president's quantum meruit claim was completely preempted by Employee Retirement Income Security Act (ERISA), so her state court action was **removable** to **federal court** and would not be remanded to state court; claim alleged that as result of her years of service and position with company she had accumulated credits toward severance benefits from company, including notice pay, transition allowance and severance pay, that company had failed or refused to make those payments to her, that it was contrary to equity and fairness to permit employer to retain those benefits at her expense, and that employer would be unjustly enriched should it be permitted to retain those benefits. Curcio v. Hartford Financial Services Group, D.Conn.2007, 469 F.Supp.2d 18. Removal Of Cases 25(1)

Complete preemption exists under ERISA civil enforcement section when: (1) plaintiff's complaint involves relevant ERISA plan; (2) plaintiff has standing to sue under plan; (3) defendant is ERISA entity; and (4) complaint seeks compensatory relief similar to what is available under civil enforcement provision. Sheridan Healthcorp., Inc. v. Neighborhood Health Partnership, Inc., S.D.Fla.2006, 459 F.Supp.2d 1269. **Federal Courts** 2263; Labor And Employment 407; States 18.51

If state law claim is one seeking relief for benefits under ERISA plan, ERISA's complete preemption applies and action is **removable** to **federal court**. Regency Hosp. Co. of South Atlanta, L.L.C. v. United Healthcare of Georgia, Inc., N.D.Ga.2005, 403 F.Supp.2d 1221. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

Employee's claims against employer for breach of contract, detrimental reliance, and discrimination in violation of the West Virginia Workmen's Compensation Act, were completely preempted by ERISA, supporting **removal** to **federal court**; claims were all based upon employer's refusal to pay long-term disability (LTD) benefits or severance pay to the employee, and the LTD and severance plans were governed by ERISA, so that they could have been brought under ERISA's civil enforcement provision, and the employer's alleged liability was based entirely on employer's alleged wrongful denial of benefits under a ERISA-regulated plan. Radcliff v. El Paso Corp., S.D.W.Va.2005, 377 F.Supp.2d 558. Labor And Employment 77; Labor And Employment 757; Removal Of Cases 25(1); States 18.46

Former employee's tortious interference claim brought in state court against her former manager/supervisor, alleging that he induced her to quit days before she became eligible for compensation under her employer's early retirement benefits plan, could not be resolved without reference to ERISA-regulated plan, and, thus, claim was completely preempted by ERISA, and **removal** to **federal court** was warranted; interpretation of the plan was not merely incidental to tortious interference claim, because employee could not prove breach of the contractual relationship without interpreting the plan. Smith v. Logan, E.D.Va.2004, 363 F.Supp.2d 804. Labor And Employment 757; Removal Of Cases 25(1); States 18.46

Fact that state law relates to employee benefit plan and is thus preempted under ERISA does not provide basis for **removing** claim to **federal court**; only state law claims properly **removable** to **federal court** are those that are completely preempted by ERISA's civil enforcement provision. Peninsula Regional Medical Center v. Mid Atlantic Medical Services, LLC., D.Md.2004, 327 F.Supp.2d 572. Removal Of Cases 25(1)

Because a state law claim that is completely preempted under ERISA becomes a federal cause of action, it may be **removed** to **federal court** even if it is pleaded only as a state-law claim. Lippard v. Unumprovident Corp., M.D.N.C.2003, 261 F.Supp.2d 368. Removal Of Cases 25(1)

State law claim which could be raised under ERISA's civil enforcement provisions, but which is actually stated in complaint as claim arising under state law, is completely preempted by ERISA, such that it necessarily states a federal claim, and is **removable** to **federal court**. Ackerman v. Fortis Benefits Ins. Co., S.D.Ohio 2003, 254 F.Supp.2d 792. Removal Of Cases 25(1)

Under complete preemption doctrine, insured's claims against health maintenance organization (HMO), as administrator of ERISA health care plan, for breach of contract, bad faith breach of insurance contract, misrepresentation, and negligent misrepresentation under New York law, arising from HMO's refusal to pay for insured's husband's tandem double stem cell treatment for multiple myeloma, necessarily raised federal question, permitting **removal** to **federal court**. Cicio v. Vytra Healthcare, E.D.N.Y.2001, 208 F.Supp.2d 288, affirmed in part, vacated in part 321 F.3d 83, vacated 124 S.Ct. 2902, 542 U.S. 933, 159 L.Ed.2d 808, on remand 385 F.3d 156. Removal Of Cases 25(1)

---- Preemption not found, ERISA, federal question in particular acts and claims

Alleged promise by employer to provide employees who stayed with employer through a fixed date with benefits was not premised on, and did not constitute, an employee benefit plan under ERISA, so that state court action based on employer's claimed failure to provide promised benefits was not within scope of, and preempted by, ERISA, and thus was not an action arising under federal law that could be **removed** to **federal court**; nothing indicated that promise was an amendment to plan, as opposed to a distinct, one-time offer of benefits, and promise did not itself constitute an ERISA plan, as it called for a one-time lump sum payment and did not involve any long-term obligations. Crews v. General American Life Ins. Co., C.A.8 (Mo.) 2001, 274 F.3d 502. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

Request for damages on failure to procure and misrepresentation claims against insurance agent, to extent it required reference to ERISA plan to compute damages for difference in amount of coverage actually available under ERISA disability insurance plan for disabled participant and amount of coverage that agent misrepresented he had procured, did not necessitate interpretation of ERISA plan, so as to completely preempt state-law tort claims under ERISA civil enforcement provision. Gulf Coast Plastic Surgery, Inc. v. Standard Ins. Co., E.D.La.2008, 562 F.Supp.2d 760. **Federal Courts** 2263; Insurance 1117(4); Labor And Employment 407; States 18.41

ERISA did not completely preempt tort claims under Puerto Rico law by beneficiary of long-term disability (LTD) plan against former employer and plan administrator alleging, inter alia, that during interview evaluating beneficiary's continuing entitlement to LTD benefits, plan administrator's employees knew of beneficiary's mental and emotional disorders and intentionally and/or negligently inflicted severe distress upon him through their interviewing technique; on their face, claims did not bear any significant resemblance to those described in ERISA civil enforcement section, arose from duties independent of employee benefit plan, and could be resolved without any interpretation of plan. Valentin Munoz v. Island Finance Corp., D.Puerto Rico 2005, 364 F.Supp.2d 131. **Federal Courts** 2263; States 18.51

Claim brought on behalf of an employee stock option plan (ESOP) subject to ERISA did not confer subject matter jurisdiction on **federal court**, and suit was required to be remanded, even though it was argued that ERISA claim preempted state law causes of action converting otherwise well-pleaded state law complaint into federal claim; only statutes providing for "complete" or "super" preemption have that effect, only section of ERISA with enhanced preemptive power involved civil actions to

enforce ERISA or covered plans, and present case challenged distribution of proceeds of sale of employer corporation among shareholders, an unrelated matter. Constantine v. Minis, S.D.Ga.1995, 910 F.Supp. 657. Removal Of Cases 25(1)

State law age discrimination claims asserted by union against employer on behalf of former employees were not so completely preempted by ERISA that they could be recharacterized as claims "arising under" federal law that were **removable** to **federal court**; although claims related in part to ERISA-covered benefits, they had also included uncovered benefits, and claims could not have been brought under either civil enforcement provision of ERISA or as claim for discrimination under ERISA. International Ass'n of Machinists and Aerospace Workers Local Lodge No. 967 by McCadden v. General Elec. Co., N.D.N.Y.1989, 713 F.Supp. 547.

---- Miscellaneous claims removable, ERISA, federal question in particular acts and claims

Common law causes of action filed in state court which were preempted by ERISA and fell within a provision establishing an exclusive federal cause of action for resolution of suits by beneficiaries to recover benefits from recovered plan, were **removable** to **federal court** under the well-pleaded complaint rule for removal, even though the defense of ERISA preemption did not appear on the face of the complaint as such claims were necessarily federal in character, regardless of whether preemption was obvious at the time suit was filed. Metropolitan Life Ins. Co. v. Taylor, U.S.Mich.1987, 107 S.Ct. 1542, 481 U.S. 58, 95 L.Ed.2d 55, on remand 826 F.2d 452. Removal Of Cases 25(1)

Employee's suit asserting contract, tort, and statutory causes of action against former employer and insurer in attempt to recover benefits that employee believed were due him under employee group medical plan was essentially one to recover benefits from group medical plan that qualified as ERISA plan, so accordingly came within scope of ERISA's civil enforcement provision, and was properly removed from state to **federal court**. Ramirez v. Inter-Continental Hotels, C.A.5 (Tex.) 1989, 890 F.2d 760. Removal Of Cases 19(5)

Claim that employee was wrongfully discharged in retaliation for and to avoid his former wife trying to collect health benefits under employee plan fell within scope of civil enforcement provisions of Employee Retirement Income Security Act and, thus, was **removable** to **federal court**. Fitzgerald v. Codex Corp., C.A.1 (Mass.) 1989, 882 F.2d 586. Removal Of Cases 19(5)

Approved out-of-network health care provider's cause of action alleging that insurer fraudulently induced it to enter into agreement with preferred provider organization by withholding fact that provider would have to provide proof of participants' deductible and coinsurance payments in order to receive full payment on claims for health care services that it provided to participants in its ERISA health insurance plans related to terms of ERISA plan, and thus was **removable** to **federal court** on basis of complete preemption, where alleged misrepresentations were all closely related to manner in which insurer managed plan, resolving fraudulent misrepresentation claim would require court to interpret plan's terms, and damages that provider sought were benefits that insurer denied under plan. Enigma Management Corp. v. Multiplan, Inc., E.D.N.Y.2014, 994 F.Supp.2d 290. Labor and Employment 407; Removal of Cases 25(1); States 18.51

Any state law claims arising within the scope of ERISA are pre-empted and properly **removable** to **federal court**. Horizon Blue Cross Blue Shield of New Jersey v. East Brunswick Surgery Center, D.N.J.2009, 623 F.Supp.2d 568. Labor And Employment 407; Removal Of Cases 25(1); States 18.51

State-law claims seeking relief within scope of ERISA's civil enforcement provision must be treated as arising under federal law, and, as such, are **removable** to **federal court** even if relief is not explicitly plead under federal law. Crossroads of Texas, LLC v. Great-West Life & Annuity Insurance Co., S.D.Tex.2006, 467 F.Supp.2d 705, reconsideration denied 2006 WL 305793. Removal Of Cases 25(1)

Fact that group disability insurance policy included under "statement of ERISA rights" a clause allowing "[insured to] file suit in a state or **federal court**" did not preclude insurer's removal of state-court action on grounds of ERISA preemption. Marino ex

rel Marino v. Continental Cas. Co., E.D.Wis.2003, 308 F.Supp.2d 906. Insurance 1117(4); Removal Of Cases 25(1); States 18.41

Provision in pension plan handbook providing that suits to recover plan benefits could be filed in state or **federal court** could not negate pension fund's right to remove suit brought against it pursuant to ERISA for alleged wrongfully withheld payment for early retirement and disability options under pension plan. Yurcik v. Sheet Metal Workers' Intern. Ass'n, S.D.N.Y.1995, 889 F.Supp. 706. Removal Of Cases 13

Federal courts are primary judicial authority to determine whether participant is covered and if so to what extent, by ERISA plan and any coverage disputes involving ERISA plans are **removable** to **federal court**. NGS American, Inc. v. Barnes, W.D.Tex.1992, 805 F.Supp. 462, affirmed 998 F.2d 296. Removal Of Cases 19(5)

Employer's medical benefits policy was covered by Employment Retirement Income Security Act, making employee's breach of contract action seeking nursing care benefits under policy **removable** to **federal court**; policy was established by employer for purpose of providing medical coverage to its employees and their dependents. Armbruster by Armbruster v. Benefit Trust Life Ins. Co., N.D.Ill.1988, 687 F.Supp. 403.

In action by hospital association against union member and union, wherein hospital association sought to recover payment for in-patient medical care and services provided to member and wherein union filed petition for removal of case from state court to **federal court**, the action, if correctly based upon the Employee Retirement Income Security Act, was based on federal question, and requisite original jurisdiction in both state and **federal courts** was present. Mercy Hosp. Ass'n v. Miccio, E.D.N.Y.1985, 604 F.Supp. 1177. Removal Of Cases 19(5)

Action by alleged participant in a retirement pension plan to recover guaranteed benefits was properly **removed** to **federal court**. Buck v. Union Trustees of Plumbers and Pipefitters Nat. Pension Fund of Plumbers and Pipefitters Intern., E.D.Tenn.1975, 70 F.R.D. 530. Removal Of Cases 19(1)

---- Miscellaneous claims not removable, ERISA, federal question in particular acts and claims

Healthcare providers' state law claims seeking reimbursement for medical services from patient, who participated in employer's group health plan, and his wife, did not present a sufficiently substantial federal question, to justify **removal** to **federal court**; although the case did necessarily raise a federal issue because providers' claims required determining liability with respect to an ERISA plan, the alleged federal issue was fact and situation specific, requiring application of employer's plan to patient's situation, if the district court were to accept jurisdiction, there was a substantial risk that the federal-state balance approved by Congress for ERISA cases would be disturbed, and the ERISA liability issue was not actually disputed. North Carolina Baptist Hospitals, Inc. v. Dula, W.D.N.C.2020, 476 F.Supp.3d 279. Removal of Cases 25(1)

Former employee's claim for failure to pay wages on termination, under Oregon law, was not completely preempted by ERISA, and thus, removal of the employee's suit against employer was not warranted on the basis of federal question jurisdiction; although the parties' employment agreement was attached to the complaint and that agreement contained a provision regarding ERISA-regulated benefits, the agreement contained many terms and conditions of employment, only some of which were at issue in the suit, the complaint did not include a claim for unpaid retirement benefits, and employee did not allege that he was denied a benefit promised to him under the terms of a ERISA-regulated plan. Bergen v. Tualatin Hills Swim Club, Inc., D.Or.2016, 170 F.Supp.3d 1309, subsequent determination 2016 WL 2736105. **Federal Courts** 2350

Approved out-of-network health care provider's claim that preferred provider organization breached parties' agreement by failing to take steps to resolve dispute between it and insurer implicated contractual duty that existed independently from any obligation under insurer's ERISA health insurance plan, and thus was not **removable** to **federal court** on basis of complete preemption, even though dispute between provider and insurer required interpretation of ERISA plan. Enigma Management

Corp. v. Multiplan, Inc., E.D.N.Y.2014, 994 F.Supp.2d 290. Labor and Employment 407; Removal of Cases 25(1); States 18.51

State law claims falling outside the ambit of ERISA's civil enforcement provision, even if expressly preempted by ERISA, remain governed by the well-pleaded complaint rule and therefore are not **removable** to **federal court**. Van Natta v. Sara Lee Corp., N.D.Iowa 2006, 439 F.Supp.2d 911. Removal Of Cases 25(1)

Since former employee was not an ERISA participant or beneficiary, she lacked standing to bring enforcement action under ERISA, and her claims under Ohio law for breach of employment contract, promissory estoppel, fraud, sex discrimination, and intentional infliction of emotional distress could not be characterized as ERISA enforcement action; thus, essential prerequisite for removal of those claims to **federal court** as completely preempted by ERISA had not been satisfied, court lacked subject matter jurisdiction over claims, and remand was warranted. Taylor-Sammons v. Bath, S.D.Ohio 2005, 398 F.Supp.2d 868. Labor And Employment 407; Removal Of Cases 25(1); Removal Of Cases 102; States 18.51

Participants' joinder of their ERISA employee health plan as defendant in personal injury action against third party, as required under state law due to its potential subrogation interest, did not involve federal question, so as to support removal of action to **federal court** on that basis; participants did not assert any claims against plan, but only stated affirmative defenses they would raise if plan asserted subrogation interest. Traynor v. O'Neil, W.D.Wis.2000, 94 F.Supp.2d 1016, appeal after remand from **federal court** 659 N.W.2d 158, 260 Wis.2d 345. Removal Of Cases 19(1)

Fair Debt Collections Practices Act, federal question in particular acts and claims

Claims by taxpayers who paid business personal ad valorem tax penalties to city, against debt collectors under the Fair Debt Collection Practices Act (FDCPA), arose under federal law, as required to invoke federal question jurisdiction and permit **removal** to **federal court**, in the absence of any showing that the claims were made solely for the purpose of obtaining jurisdiction or were wholly insubstantial and frivolous. Robert J. Caluda, APLC v. City of New Orleans, E.D.La.2019, 403 F.Supp.3d 522. **Federal Courts** 2213

Lender's complaint, seeking foreclosure, provided no basis for federal question jurisdiction, as required to support mortgagors' removal of action to **federal court**, notwithstanding mortgagors' claim that lender constituted a debt collector under the Fair Debt Collection Practices Act (FDCPA) or that lender's conduct had, in some respect, violated the Consumer Credit Cost Disclosure Act (CCCDA), where face of lender's complaint contained no FDCPA or CCCDA claims, nor relied upon any other federal statute. Green Tree Servicing LLC v. Dillard, D.N.J.2015, 88 F.Supp.3d 399, reconsideration denied 2015 WL 4111897. Removal of Cases 25(1)

State court action brought by debtor against creditor bank, alleging violations of Fair Debt Collection Practices Act (FDCPA), was properly **removed** to **federal court**, since each claim in complaint was grounded in federal law, and action was separate and independent from credit collection case brought in state court by bank against debtor. Doherty v. Citibank (South Dakota) N.A., E.D.N.Y.2005, 375 F.Supp.2d 158. Removal Of Cases 49.1(1)

Federal Insecticide Fungicide and Rodenticide Act, federal question in particular acts and claims

Removal of state law claims arising out of alleged exposure to pesticides could not be predicated upon federal preemption of state law claims under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) where statute did not provide private right of action or contain specific grant of **federal court** jurisdiction; statute did not meet criteria to support **removal** to **federal court** under complete preemption doctrine upon preemption by federal statute of state claims. Rodriguez v. Shell Oil Co., S.D.Tex.1993, 818 F.Supp. 1013. Removal Of Cases 25(1)

Housing claims, federal question in particular acts and claims

Action by buyers of mobile home against manufacturer could not have been brought in **federal court**, and thus **removal** was improper, even though plaintiffs could have chosen to pursue claims jointly under identical federal and state standards, where they did not do so but pursued only state law remedies. Woolridge v. Redman Homes, Inc., N.D.Tex.1991, 792 F.Supp. 1469. Removal Of Cases 25(1); Removal Of Cases 102

Indians, federal question in particular acts and claims--Generally

Possible existence of tribal sovereign immunity defense to state's action for unpaid excise taxes did not convert the state's tax claims against Indian tribe into federal questions so as to support **removal** to **federal court**. Oklahoma Tax Com'n v. Graham, U.S.Okla.1989, 109 S.Ct. 1519, 489 U.S. 838, 103 L.Ed.2d 924, on remand 873 F.2d 1387. Removal Of Cases 25(1)

---- Miscellaneous claims, Indians, federal question in particular acts and claims

A contested proceeding for probate of will executed by a full-blood Mississippi Choctaw Indian whose estate consisted in whole or in part of land restricted against alienation and who was survived by Indian heirs, could on petition of United States be **removed** to **federal court**. Berry v. Brokeshoulder, C.C.A.10 (Okla.) 1947, 162 F.2d 651. Removal Of Cases 19(2)

A complaint in a suit to cancel an oil and gas lease, executed under Act May 27, 1908, by the guardian of a minor, who was a full-blood Choctaw Indian, asserted claims arising under federal law, and hence was properly removed to and tried in a **federal court**. Jackson v. Gates Oil Co., C.C.A.8 (Okla.) 1924, 297 F. 549. Removal Of Cases 25(1)

Under well-pleaded complaint rule, state court action by Colorado Attorney General and Administrator of Uniform Consumer Credit Code against South Dakota limited liability company and its sole manager and executive officer for alleged violations of Colorado Uniform Consumer Credit Code (UCCC) and Colorado Consumer Protection Act (CCPA) was not **removable** to **federal court** and had to be remanded; even if Congress had completely preempted the regulation of Indian affairs on a reservation, conduct of which plaintiffs complained did not involve such regulation, and facts that individual defendant was member of Indian tribe and that he owned company that operated within boundaries of reservation but was neither owned nor operated by tribe were incidental to plaintiffs' claims. Colorado v. Western Sky Financial, L.L.C., D.Colo.2011, 845 F.Supp.2d 1178, on remand 2013 WL 9670692. Removal of Cases 25(1)

A suit by member of the Creek Nation for an accounting for value of casing-head gas obtained and sold by oil company, as lessee under an oil and gas lease covering lands allotted to the plaintiff, in which issues presented could not be disposed of without applying federal statute and rules and regulations of the Secretary of the Interior with respect to casing-head gas, was removable from state court to **federal court**, under former § 71 of this title. Seber v. Spring Oil Co., N.D.Okla.1940, 33 F.Supp. 805. Removal Of Cases 19(3)

Insurance actions, federal question in particular acts and claims--Generally

Because Ohio statute effectively precluding out-of-state insurance companies from removing cases from state to **federal court** was not enacted to regulate the business of insurance, the McCarran-Ferguson Act, which generally provides that federal law shall not be construed to invalidate state law that regulates business of insurance, did not save the Ohio statute from being preempted by federal removal statute. International Ins. Co. v. Duryee, C.A.6 (Ohio) 1996, 96 F.3d 837. Removal Of Cases 3; States 18.41

---- Miscellaneous claims, insurance actions, federal question in particular acts and claims

Isolated reference to the Health Insurance Portability and Accountability Act (HIPAA) in 63-page complaint filed against insurer and health maintenance organization (HMO), after cyberattack on computer system of their corporate parent exposed class members' personal information to hackers, was insufficient to provide basis for removal of plaintiffs' state court action, which sought to recover on state law breach of fiduciary duty, breach of contract, and negligence theories, to **federal court** based on the court's federal question jurisdiction under HIPAA, especially given that HIPAA did not provide private cause of action for violations of its provisions. In re Anthem, Inc., N.D.Cal.2015, 129 F.Supp.3d 887. Action 3; Health 196; Health 257

Class action brought by automobile purchasers against automobile finance company for company's alleged fraud in issuing and collecting vehicle single-interest insurance premiums was not properly **removed** to **federal court** simply because the defendants might have preemption defense under the National Bank Act (NBA), where purchasers did not attempt to state claim under the NBA or under any other federal provisions. Giddens v. Hometown Financial Services, M.D.Ala.1996, 938 F.Supp. 801. Removal Of Cases 25(1)

---- Arbitration, labor and employment claims, federal question in particular acts and claims

State court suit by employer, seeking declaratory judgment that prior state court judgment precluded union from litigating or compelling arbitration on issue whether polygraph testing was permitted under collective bargaining agreement, was **removable** to **federal court** under § 301 of the Labor Management Relations Act, because such claim, founded upon labor contract violation, was presumptively federal. Hunter Douglas Inc. v. Sheet Metal Workers Intern. Ass'n, Local 159, C.A.4 (N.C.) 1983, 714 F.2d 342. Removal Of Cases 19(5)

Whether complaint was construed as one to enjoin arbitration or for declaratory judgment protecting against improper arbitration demands, action was one over which **federal court** would have had original jurisdiction to determine obligation of parties to arbitrate dispute under a collective bargaining agreement pursuant to Labor Management Relations Act, § 141 et seq. of Title 29, and plaintiff was not entitled to have action remanded. Jenkins Bros. v. Local 5623, United Steelworkers of America, D.C.Conn.1964, 230 F.Supp. 871, affirmed 341 F.2d 987, certiorari denied 86 S.Ct. 45, 382 U.S. 819, 15 L.Ed.2d 66. Removal Of Cases 19(5)

---- Boycotts, labor and employment claims, federal question in particular acts and claims

Action alleging that two unions had engaged in unlawful secondary boycott against employer was properly **removed** to **federal court**, notwithstanding that there was no reference on face of complaint to federal law; essence of claim of secondary boycott was within exclusive jurisdiction of federal Labor Management Relations Act. Cunningham v. Dixon, S.D.Ohio 1987, 700 F.Supp. 20. Removal Of Cases 19(5); Removal Of Cases 25(1)

Since, as pled, trucker's claim against labor union was based solely on state cause of action, i.e., common-law tort of malicious interference with contract whereby trucker leased vehicles to corporation with which union had bargaining agreement, suit was nonremovable from state to **federal court** on ground that the latter had exclusive and original jurisdiction under § 185 of Title 29, on ground that facts pled alleged violation of secondary boycott provisions of § 158 of Title 29, since complaint made no mention of any such cause of action; whether state cause of action was pled was for determination by the state courts and not by **federal court** on motion to remand. Coulston v. International Broth. of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, E.D.Pa.1976, 423 F.Supp. 882. Removal Of Cases 25(1)

If true, allegations that union attempting to seek new collective bargaining agreement assaulted driver of common carrier seeking to enter employer's plant and obstructed employer, its employees and others from carrying out their lawful activities could

constitute unfair labor practices of coercing nonunion employees in exercise of their industrial rights and engaging in secondary boycott with third parties and would support removal of employer's state court action, seeking injunctive and general relief against unions and others, to **federal court**. Day-Brite Lighting Division, Emerson Elec. Co. v. International Broth. of Elec. Workers, AFL-CIO, N.D.Miss.1969, 303 F.Supp. 1086. Removal Of Cases 25(1)

---- Collective bargaining agreements, labor and employment claims, federal question in particular acts and claims

Even though employee did not attach a copy of collective bargaining agreement (CBA) to his complaint in suit against employer for unjust enrichment, court would consider it in adjudicating employee's motion to remand, for lack of federal subject matter jurisdiction, and employer's motion to dismiss, where complaint necessarily relied on CBA by quoting from and discussing it extensively, and employer had attached a copy to its motion to dismiss. Cefarrati v. JBG Properties, Inc., D.D.C.2014, 75 F.Supp.3d 58. **Federal Courts** 2080

Complete preemption extends to state law claims founded directly on rights created by collective bargaining agreements (CBAs) or substantially dependent on analysis of CBA claim; on one hand, claim so fits if it adduces conduct that arguably comprises breach of duty that arises pursuant to CBA, and on the other hand, claim so qualifies if its resolution arguably hinges upon interpretation of CBA. Flores-Flores v. Horizon Lines of Puerto Rico, Inc., D.Puerto Rico 2012, 875 F.Supp.2d 90. **Federal Courts** 2264(2); Labor And Employment 1243; States 18.46

Claim under collective bargaining agreement or involving its interpretation is one under LMRA section granting federal jurisdiction to suits for breach of contract between union and employer, and hence is **removable** to **federal court**. Old Country Iron Works, Inc. v. Iron Workers Locals 40, 361 & 417 of Intern. Ass'n of Bridge, Structural and Ornamental Iron Workers Union Sec. Funds, S.D.N.Y.1993, 842 F.Supp. 75. Removal Of Cases 19(5)

To extent that workers' state complaint against employer and union alleged breaches of collective bargaining agreement and of contract with respect to negotiation, adoption, and implementation of such agreement, and violations of union's duty of fair representation, action was completely preempted by federal law and thus properly **removable** to **federal court**; additional state causes of action alleged in complaint, however, were not preempted by federal law, and thus were not **removable** to **federal court**. Adkins v. General Motors Corp., S.D.Ohio 1984, 578 F.Supp. 315. Removal Of Cases 19(4); States 18.46

Involvement of a collective bargaining agreement was necessary before **federal court** would have original or removal jurisdiction under § 185 of Title 29. Beacon Moving & Storage, Inc. v. Local 814, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers, S.D.N.Y.1972, 362 F.Supp. 442. Labor And Employment 1980; Removal Of Cases 19(5)

An allegation of a contract or collective bargaining agreement must be made before a federal district court will have original or removal jurisdiction of an action involving a labor dispute based on § 185 of Title 29 conferring jurisdiction upon a district court to enforce collective bargaining agreements in industries affecting interstate commerce. Kayser-Roth Hosiery Co.Inc., Dayton Division v. Textile Workers Union of America AFL CIO, E.D.Tenn.1968, 285 F.Supp. 484. **Federal Courts** 2351(4); **Removal** Of Cases 25(1)

Where complaint of employers alleged that union violated collective bargaining agreement between parties, federal district court had original jurisdiction under Labor Management Relations Act, § 141 et seq. of Title 29, and action was properly removed from state court to district court. Katz v. Architectural and Engineering Guild, Local 66, American Federation of Technical Engineers, AFL-CIO, S.D.N.Y.1966, 263 F.Supp. 222. **Federal Courts** 2264(3); **Removal** Of Cases 19(5)

---- Discharge or termination, labor and employment claims, federal question in particular acts and claims

Employee's claim, that employer's discharge violated implied, independent, and individual contract between himself and employer, following expiration of collective bargaining agreement under which employee had been employed, and thereby gave rise to state law breach of contract claim, but not federal claim, was undermined by employee's total reliance on federal substantive labor law, even though law was invoked indirectly and as a stepping stone, not as a substantive right; thus, removal of action to **federal court** was appropriate. Derrico v. Sheehan Emergency Hosp., C.A.2 (N.Y.) 1988, 844 F.2d 22. Removal Of Cases 19(5)

Former employee's tortious termination of employment claim, which alleged that employee was a member of union at time employer forced him to resign from employment and that employee possessed rights under collective bargaining agreement negotiated between employer and union, stated a cause of action of collective bargaining agreement under Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185, and therefore **removal** to **federal court** was proper. Mitchell v. Pepsi-Cola Bottlers, Inc., C.A.7 (Ill.) 1985, 772 F.2d 342, certiorari denied 106 S.Ct. 1266, 475 U.S. 1047, 89 L.Ed.2d 575. Removal Of Cases 19(5)

Discharged restaurant employee's discrimination action was properly removed from state to **federal court**; employee explicitly claimed that a federal law had been violated and did not refute district court's jurisdiction based on application of Civil Rights Act. Aaron v. Bob Evans Restaurant, N.D.Ohio 2007, 477 F.Supp.2d 853. Removal Of Cases 19(1)

Former employee's suit against employer and union for "wrongful and involuntary termination" of employment was **removable** to **federal court**, despite apparent absence of allegations giving rise to either federal question or diversity jurisdiction; employee could not avoid implications of federal law simply by avoiding reference to relevant federal statutes underlying wrongful discharge/fair representation claim. Schultz v. Carnation Co., Instant Div., E.D.Wis.1988, 676 F.Supp. 185. Removal Of Cases 25(1)

---- Fair Labor Standards Act, labor and employment claims, federal question in particular acts and claims

Client's motion for hearing did not invoke district court's subject matter jurisdiction, which motion was filed during stay of client's state court action against attorney, asserting claims for breach of contract and unjust enrichment based on allegations that attorney improperly charged client a contingent attorney fee for prosecuting in federal district court the client's FLSA claims; motion did not purport to remove the state court action to district court, nor did it purport to serve as a complaint for independent action under district court's federal question jurisdiction or diversity jurisdiction, and instead it presented the same cause of action as the one pending in state court, except that the parties were reversed. Padilla v. Smith, C.A.11 (Ala.) 2022, 53 F.4th 1303. **Federal Courts** 2233; **Federal Courts** 2412; **Removal** of Cases 76.5

Employees' action seeking overtime based on employer allegedly reclassifying them from non-exempt to exempt status under the Fair Labor Standards Act (FLSA) was **removable** to **federal court**, even though action was commenced in state court. Bingham v. Newport News Shipbuilding and Drydock Co., E.D.Va.1998, 3 F.Supp.2d 691. Removal Of Cases 19(5)

Action brought under Fair Labor Standards Act (FLSA) could be **removed** to **federal court**, though state and **federal courts** have concurrent jurisdiction over such actions; removal statute allowed removal when federal district court would have original, not necessarily exclusive, jurisdiction, and Congress did not expressly provide that FLSA actions could not be removed. Waldermeyer v. ITT Consumer Financial Corp., E.D.Mo.1991, 767 F.Supp. 989. Removal Of Cases 13

Although the Fair Labor Standards Act, § 201 et seq. of Title 29, does provide that an action under the Act may be maintained in any court of competent jurisdiction, that provision does not render such an action nonremovable and such a case may be **removed** to **federal court** on the basis of court's jurisdiction over cases arising under acts of Congress affecting commerce. Barrett v. McDonald's of Oklahoma City, W.D.Okla.1976, 419 F.Supp. 792. Removal Of Cases 19(5)

Actions brought in state court under Fair Labor Standards Act, § 201 et seq. of Title 29, were not **removable** to **federal court**. Carter v. Hill & Hill Truck Line, Inc., S.D.Tex.1966, 259 F.Supp. 429. Removal Of Cases 13

An action under Fair Labor Standards Act, § 201 et seq. of Title 29, to recover overtime compensation was removable from state to **federal courts**. Niswander v. Paul Hardeman, Inc., E.D.Ark.1963, 223 F.Supp. 74. Removal Of Cases 19(5)

An action under Fair Labor Standards Act, § 201 et seq. of Title 29, was not removable from Superior Court of Commonwealth of Puerto Rico to **federal court**. Rolon v. Flexicore Co. of Puerto Rico Inc., D.C.Puerto Rico 1963, 216 F.Supp. 954. Removal Of Cases 19(5)

---- Family and Medical Leave Act, labor and employment claims, federal question in particular acts and claims

FMLA action, which may be maintained in any federal or state court of competent jurisdiction, may be **removed** to **federal court** even after it has been commenced in state court. Ladner v. Alexander & Alexander, Inc., W.D.La.1995, 879 F.Supp. 598. Removal Of Cases 19(1)

---- Federal Employees Health Benefits Act, labor and employment claims, federal question in particular acts and claims

"Complete preemption doctrine" did not apply to claims of insureds against health benefit plan, for violations of New Jersey Law Against Discrimination, breach of contract, unconscionable exclusion of coverage, and unfair claim settlement practices, in connection with denial of benefits for breast cancer treatment, and thus recharacterization of their state claims as federal claims was not possible and there was no claim arising under federal law to be removed and litigated in **federal court**, as Federal Employees Health Benefits Act (FEHBA) did not create statutory cause of action in favor of insureds. Goepel v. National Postal Mail Handlers Union, a Div. of LIUNA, C.A.3 (N.J.) 1994, 36 F.3d 306, rehearing and rehearing in banc denied, certiorari denied 115 S.Ct. 1691, 514 U.S. 1063, 131 L.Ed.2d 555. Removal Of Cases 25(1); States 18.15; States 18.46

Patient's claims for fraud and tortious interference with contract, asserted against health plan governed by Federal Employees Health Benefits Act (FEHBA) in connection with financial incentive program that allegedly encouraged physicians to reduce quality of care, were **removable** to **federal court** under complete preemption doctrine; claims essentially challenged denial of benefits, FEHBA provided mandatory administrative process for review of denied claims, and there was clear Congressional intent to preempt related tort claims. Kight v. Kaiser Foundation Health Plan of Mid-Atlantic States, Inc., E.D.Va.1999, 34 F.Supp.2d 334. Removal Of Cases 25(1)

State law tort claims asserted against health maintenance organization (HMO) by participant in health plan under Federal Employees' Health Benefits Act (FEHBA) which related to quality, rather than quantity, of benefits received by participant were not displaced by federal common law, and thus, participant's claim did not arise under federal law and could not be **removed** to **federal court**. Santitoro v. Evans, E.D.N.C.1996, 935 F.Supp. 733. Removal Of Cases 25(1)

---- Labor Management Relations Act, labor and employment claims, federal question in particular acts and claims

Claim under Labor Management Relations Act, 1947, § 141 et seq. of Title 29, states an independent ground of federal jurisdiction and is **removable** to **federal court**. Suissa v. American Export Lines, Inc., C.A.2 (N.Y.) 1974, 507 F.2d 1343. Removal Of Cases 19(5)

Determination that a cause of action was stated under § 158 of Title 29, dealing with unfair labor practices was itself sufficient to bestow original jurisdiction on **federal court** as respects **removal** and fact that injunctive relief was sought did not go to the

jurisdiction of the court. Mountain Nav. Co., Inc. v. Seafarer's Intern. Union of North America, W.D.Wis.1971, 348 F.Supp. 1298. Removal Of Cases 11

Actions cognizable under provision of § 185 of Title 29 governing suits by and against labor organizations are **removable** to **federal court**. Chapman v. Southeast Region I.L.G.W.U. Health and Welfare Recreation Fund, D.C.S.C.1967, 265 F.Supp. 675. Removal Of Cases 19(5)

---- Norris-LaGuardia Act, labor and employment claims, federal question in particular acts and claims

In view of Norris-LaGuardia Act, § 101 et seq. of Title 29, Pennsylvania court action, under Pennsylvania law, to enjoin union's violation of "no-strike" provisions of contract, was not one of which **federal court** had subject matter jurisdiction within "original jurisdiction" provisions of this section, where complaint did not disclose that there was controversy arising under federal law or Constitution. American Dredging Co. v. Local 25, Marine Division, Intern. Union of Operating Engineers, AFL-CIO, C.A.3 (Pa.) 1964, 338 F.2d 837, certiorari denied 85 S.Ct. 941, 380 U.S. 935, 13 L.Ed.2d 822. Removal Of Cases 25(1)

Employer's action to restrain union from engaging in work stoppage in alleged violation of collective bargaining agreement was **removable** to **federal court** notwithstanding provision of Norris-LaGuardia Act, § 101 et seq. of Title 29, imposing drastic limitation on power to restrain peaceful picketing, since such Act read as a whole is not subject to construction that there is a complete blackout or deprivation at the federal doorstep of all jurisdiction under Labor Management Relations Act, § 141 et seq. of Title 29, that prevents the removal. Sealtest Foods Division of National Dairy Products Corporation--Branch 443 v. Conrad, N.D.N.Y.1966, 262 F.Supp. 623. Removal Of Cases 19(5)

Section 185(a) of Title 29 did not enlarge class of cases over which federal district courts have jurisdiction nor did it remove restrictions of § 104 of Title 29, which forbids federal district courts from hearing injunction cases against labor organizations, even though cases arise from violation of labor relations contract, and, therefore, action seeking injunction for alleged breach of such contract was improperly removed from territorial court to federal district court. Castle & Cooke Terminals v. Local 137 of Intern. Longshoremen's and Warehousemen's Union, D.C.Hawai'i 1953, 110 F.Supp. 247. **Federal Courts** 2264(3); Labor And Employment 2018; Labor And Employment 2086; Removal Of Cases 19(1)

---- Pension and health plans, labor and employment claims, federal question in particular acts and claims

Federal jurisdiction existed over federal employee's claim against sponsor and administrator of health plan, seeking coverage for certain breast cancer treatment, and, therefore, removal of employee's state court action to **federal court** was proper, since federal common law entirely displaced state contract law. Caudill v. Blue Cross and Blue Shield of North Carolina, C.A.4 (N.C.) 1993, 999 F.2d 74. Removal Of Cases 25(1)

Where plan participant in jointly trusteed employee health and welfare plan alleged no federal cause of action, raised no federal issue, and relied on no federal statute, but rather, sought relief based on Texas Deceptive Trade Practices-Consumer Protection Act, Vernon's Ann.Bus. & Com.Code Ann. § 17.41 et seq., negligence, and fraud, action did not "arise under" federal law for purposes of § 1331 of this title governing original jurisdiction of **federal courts** and **removal**, even though plan asserted in its petition for removal that state claims were preempted by federal law. Powers v. South Central United Food & Commercial Workers Unions and Employers Health & Welfare Trust, C.A.5 (Tex.) 1983, 719 F.2d 760. Removal Of Cases 25(1)

---- Picketing, labor and employment claims, federal question in particular acts and claims

While complaint filed by company which alleged that union had engaged and continued to engage in picketing activities that constituted tortious interference with company's contractual relations may have alleged facts sufficient to state some federal claims, where it legally relied only on New York law forbidding tortious interference with contractual relations, the complaint

did not disclose a federal question that could provide the basis for "arising under" jurisdiction. Billy Jack for Her, Inc. v. New York Coat, Suit, Dress, Rainwear and Allied Workers' Union, ILGWU, AFL-CIO, Local 1-35, 10, 22, 48, 77, 89 and 189, S.D.N.Y.1981, 511 F.Supp. 1180. **Federal Courts** 2351(4)

Assuming substance of complaint wherein plaintiff city sought to enjoin defendant unions from forming a picket line around a foreign flagship sounded in a violation of § 158 of Title 29 governing unfair labor practices, an area of controversy preempted by federal law, federal district court did not have original jurisdiction in matter, and case was not subject to removal from state court, since Congress preempted some areas of labor management relations (e.g., "unfair labor practice" complaints) and vested exclusive jurisdiction in National Labor Relations Board, but neither state nor **federal courts** had original jurisdiction. City of Galveston v. International Organization of Masters, Mates and Pilots, S.D.Tex.1972, 338 F.Supp. 907. Removal Of Cases 11

Fact that controversy between plaintiff city and defendant unions involved a "labor dispute," i.e., refusal of plaintiff's employees to cross a picket line formed by defendants around a foreign flagship, did not in itself vest **federal court** with jurisdiction to adjudicate matter, and action on complaint wherein plaintiff sought to obtain injunction against picketing was not subject to removal from state court, where plaintiff sought only injunctive relief against defendants' alleged violations of state law, and where it was clear that no contract or collective bargaining was involved under allegations of complaint. City of Galveston v. International Organization of Masters, Mates and Pilots, S.D.Tex.1972, 338 F.Supp. 907. Removal Of Cases 11

---- Strikes, labor and employment claims, federal question in particular acts and claims

Union defendants in actions to enjoin strikes can as matter of course obtain **removal** to **federal court**. Boys Markets, Inc. v. Retail Clerks Union, Local 770, U.S.Cal.1970, 90 S.Ct. 1583, 398 U.S. 235, 26 L.Ed.2d 199. Removal Of Cases 19(5)

---- Wage claims, labor and employment claims, federal question in particular acts and claims

Where employees, whose state complaint sought unpaid wages and penalties against employer, did not allege any issue relating to collective bargaining agreement, employees would not be required to prevail on any such issue in order to establish their right to recovery, and only federal issue under agreement arose by way of employer's counterclaim, **federal court** could not exercise removal jurisdiction over action. Cook v. Georgetown Steel Corp., C.A.4 (S.C.) 1985, 770 F.2d 1272. Removal Of Cases 25(1)

---- Complete preemption, labor and employment claims, federal question in particular acts and claims

For purposes of complete preemption corollary to well-pleaded complaint rule, LMRA preempted employee's state law breach of contract claim and removal of claim to **federal court** was thus proper, claim quoted at length from collective bargaining agreement provision relating to causes for disciplinary action and was one to enforce collective bargaining agreement. Jackson v. Southern California Gas Co., C.A.9 (Cal.) 1989, 881 F.2d 638. Labor And Employment 1243; Removal Of Cases 25(1); States 18.46

Preemption issues raised by e-commerce retailer in New York's action against it, alleging violations of New York labor laws in response to COVID-19 pandemic, were not capable of resolution in **federal court** without disrupting the federal-state balance, and thus, federal question jurisdiction did not lie over claims, as would provide ground for removal; Congress approved a balance where state labor and workplace safety laws coexisted with federal standards, and Congress did not indicate that state courts were inappropriate forums to resolve such issues by completely preempting them. New York by James v. Amazon.com, Inc., S.D.N.Y.2021, 2021 WL 3140051. Labor and Employment 2560; Removal of Cases 25(1); States 18.46

Former employee's tortious interference claim brought in state court against her former manager/supervisor, alleging that he induced her to quit days before she became eligible for compensation under her employer's early retirement benefits plan, could

not be resolved without reference to collective bargaining agreement (CBA) between her former employer and union, and, thus, claim was completely preempted by the LMRA, and **removal** to **federal court** was warranted, where plan was offered pursuant to provisions of the CBA, and, since breach of contract was an essential element of tortious interference, resolution of employee's claim required interpretation of the plan. Smith v. Logan, E.D.Va.2004, 363 F.Supp.2d 804. Labor And Employment 757; Removal Of Cases 25(1); States 18.46

Labor Management Relations Act (LMRA) completely preempted union official's state law claims of defamation and intentional infliction of emotional distress arising out of letter posted by employer pursuant to settlement of employee's grievance against allowing union official to exercise "superseniority" rights after reduction in force and, therefore, complaint could be **removed** to **federal court** as one arising under federal law; determining whether any privilege attached to posting of allegedly defamatory letter would require interpretation of collective bargaining agreement, and union's and employer's compliance with agreement would prevent conduct from being extreme and outrageous, as required to recover emotional distress damages under Michigan law. Crawford v. TRW, Inc., E.D.Mich.1993, 815 F.Supp. 1028. Removal Of Cases 25(1)

One corollary of the well-pleaded complaint rule is that Congress may so completely preempt particular area that any civil complaint raising the select group of claims is necessarily federal in character; such corollary applies to claims under § 301 of the LMRA (Labor Management Relations Act of 1947) and to state law claims preempted by ERISA. Pike v. Edgar, D.N.H.1992, 801 F.Supp. 907. **Federal Courts** 2352

Employee's claim for breach of employment contract, which was based on allegation that he was terminated without reason or explanation in violation of collective bargaining agreement, was completely preempted by Labor Management Relations Act and therefore subject matter jurisdiction existed such that employee's state law claims could be **removed** to **federal court**. Magerer v. John Sexton & Co., D.Mass.1990, 727 F.Supp. 744, affirmed 912 F.2d 525. Removal Of Cases 25(1)

---- Preemption not found, labor and employment claims, federal question in particular acts and claims

Claim by airline employee, that he had been subject to retaliation for filing of state workers' compensation claim, as prohibited by state law, did not involve area completely preempted by federal statutes, and consequently there was no federal subject matter jurisdiction to support **removal** to **federal court**. Anderson v. American Airlines, Inc., C.A.5 (Tex.) 1993, 2 F.3d 590, rehearing denied 9 F.3d 105. Labor And Employment 757; Removal Of Cases 25(1); States 18.46

New York McKinney's Labor Law § 198-c, upon which trustees of several employee benefit funds relied in state court action to recover past-due payments to those funds, afforded a basis for relief, and thus fact that federal law may have preempted field was insufficient to confer original jurisdiction upon federal district court so as to entitle defendants to **remove** action to **federal court**. Sarnelli v. Tickle, E.D.N.Y.1983, 556 F.Supp. 557. Removal Of Cases 11

---- Miscellaneous claims removable, labor and employment claims, federal question in particular acts and claims

Police officer's claim that there should be no promotions to lieutenant as long as he was deemed ineligible for promotion had a sufficient federal character to support removal; claim was based on method of selecting officers for promotion that was derived from settlement of federal employment discrimination action, and relief officer sought in state court had direct and adverse impact on **federal court** consent decree. Striff v. Mason, C.A.6 (Ohio) 1988, 849 F.2d 240. Removal Of Cases 19(5)

District court properly looked to removal petition to ascertain facts concerning former employee's membership in union, collective bargaining agreement and interstate character of former employer's business as well as to former employer's motion to remand in which those essential facts were admitted and, having done so, it followed that former employee's claim arose under Labor Management Relations Act, which preempted state law, and that action was therefore properly **removed** to **federal**

court and was barred by six-month statute of limitations. Oglesby v. RCA Corp., C.A.7 (Ind.) 1985, 752 F.2d 272. Removal Of Cases 19(5); Removal Of Cases 25(1)

Although it was still open question whether simple negligence on part of union constituted actionable breach of duty of fair representation, answer depended upon application of federal law and union member's suit against union for breach of duty of fair representation was thus properly removed from state to federal court. Grisbaum v. Amalgamated Meat Cutters & Milwaukee Retail Meat Industry Trust Fund, E.D.Wis.1980, 482 F.Supp. 1218. Removal Of Cases 19(5)

A state court action to restrain union from engaging in any form of work stoppage in alleged violation of collective bargaining agreement was not precluded from being removed to federal court on ground that employer's right depended on state contract and was in no way dependent upon federal law or Constitution, since such agreement is given singular and special status by congressional enactment and clear Supreme Court interpretations. Sealtest Foods Division of National Dairy Products Corporation--Branch 443 v. Conrad, N.D.N.Y.1966, 262 F.Supp. 623. Removal Of Cases 19(5)

---- Miscellaneous claims not removable, labor and employment claims, federal question in particular acts and claims

Federal issues raised by e-commerce retailer in suit over its alleged violations of New York labor laws in response to COVID-19 pandemic were not substantial, and thus, federal question jurisdiction did not lie over claims, as would provide ground for removal; determination of whether it was reasonable to require businesses to implement certain cleaning and ventilation standards, establish contact-tracing programs, and enforce social distancing to protect health and safety of employees did not require interpretation of federal law, victims had recourse in federal courts and agencies to vindicate federal rights, and question of whether Center for Disease Control (CDC) guidance suggested that retailer's safety measures were unreasonable under state law was fact-bound and situation specific. New York by James v. Amazon.com, Inc., S.D.N.Y.2021, 2021 WL 3140051. Removal of Cases 19(5)

Federal court would not allow removal of suit by building maintenance workers, claiming that purchaser of building violated city code provision by not retaining them for 90 days following transfer; there were provisions of code requiring consideration of workers for employment beyond 90-day period that were arguably violative of Fourteenth Amendment and Supremacy Clause, and state court construction of provisions so that they did not extend 90 day employment guarantee would eliminate need for removal. Alcantara v. Allied Properties, LLC, E.D.N.Y.2004, 334 F.Supp.2d 336. Removal Of Cases 19(5)

City's state court injunction action complaining of alleged illegality during union organizing campaign among city employees was not removable to federal court on ground that complaint actually asserted a right under U.S.C.A. Const. Amend. 1 not to be forced to associate with the union by entering into a contract in violation of North Carolina law since any issue under U.S.C.A. Const. Amend. 1 would involve a matter of defense to be raised by defendant union and city had no need to rely on such amendment since state law protected its interests. City of Winston-Salem v. Chauffeurs, Teamsters & Helpers Local Union No. 391, M.D.N.C.1979, 470 F.Supp. 442. Removal Of Cases 25(1)

Landlord and tenant claims, federal question in particular acts and claims

Since tenant's claim that landlord sought to evict him solely because he was Puerto Rican was required to be asserted, if at all, by way of defense or counterclaim, tenant was not entitled to removal of state court eviction action to federal court under federal question jurisdiction. Little Ferry Assoc. v. Diaz, S.D.N.Y.1980, 484 F.Supp. 890. Removal Of Cases 25(1)

Licensing and regulation of professions, federal question in particular acts and claims

Practice of law is not a right or privilege granted by Constitution and laws of the United States and in West Virginia privilege is granted, regulated and supervised by West Virginia State Bar, an agency of West Virginia Supreme Court of Appeals, and federal jurisdiction in suit brought by state bar for alleged unlawful solicitation of legal business could not be invoked on theory that suit raised substantial federal question. West Virginia State Bar v. Bostic, S.D.W.Va.1972, 351 F.Supp. 1118. Attorneys And Legal Services 45; **Federal Courts** 2273

Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, federal question in particular acts and claims

Removal was proper in lawsuit asserting distinct breaches of express and implied warranty claims under Magnuson-Moss Warranty Act (MMWA), even if majority of claims were based on state law, since **federal court** had original jurisdiction over claims brought under MMWA. Hopkins v. Fife RV and Auto Center, W.D.Wash.2016, 180 F.Supp.3d 823. Removal of Cases 11; Removal of Cases 19(5)

Medical Care Recovery Act, federal question in particular acts and claims

State court tort action could not be **removed** to **federal court** pursuant to this section permitting removal of any action of which district courts have original jurisdiction, since action was not based on violation of any federal right and was not between citizens of different states; moreover, fact that United States had a claim against defendants under Medical Care Recovery Act, § 2651 of Title 42, as subrogee did not make the tort claim arise under federal law. Thomas v. Shelton, C.A.7 (Ind.) 1984, 740 F.2d 478. Removal Of Cases 11

Mortgages, federal question in particular acts and claims--Generally

National Bank Act (NBA) preempted action brought by mortgagors against mortgagee, seeking to recover allegedly unlawful fees charged on second mortgage loans, under Missouri Second Mortgage Loan Act (SMLA), and thus, **removal** to **federal court** was warranted; mortgagee was federally chartered national bank, NBA completely preempted state law claims challenging interest charged by national banks, and alleged unlawful fees qualified as interest under the NBA. Phipps v. F.D.I.C., C.A.8 (Mo.) 2005, 417 F.3d 1006, rehearing and rehearing en banc denied. Finance, Banking, And Credit 15(3); Removal Of Cases 25(1); States 18.19

Motor vehicle and child safety seat claims, federal question in particular acts and claims

Motor vehicle owners' negligence claim against manufacturer alleging violation of Motor Vehicle Safety Act (MVSA) did not arise under federal law for purposes of federal jurisdiction; owners alleged violation of MVSA as element of Delaware law tort claim flowing from fact that violation of any statute enacted for safety and protection of public constitutes negligence per se under Delaware law, there is no private cause of action under MVSA, owners' case did not hinge upon jury finding of violation of MVSA, and the claim was not “in reality” a claim under the MVSA. Coardes v. Chrysler Corp., D.Del.1992, 785 F.Supp. 480. Action 3; **Federal Courts** 2290; Products Liability 303

Products liability case against manufacturer of infant restraint car seat was not **removable** to **federal court** pursuant to complete preemption doctrine, in that Congress had not clearly manifested intent to make all causes of action relating to infants restraints **removable** to **federal court**; federal regulations provided that compliance would not exempt manufacturer from liability under common law, and legislative history indicated lack of congressional intent for exclusive federal forum. Amrhein v. Quaker Oats Co., E.D.Mo.1990, 752 F.Supp. 894. Removal Of Cases 25(1)

Natural Gas Act, federal question in particular acts and claims

Prospective condemnees were not entitled to removal of expropriation case to **federal court** on ground that federal question was involved because action was under Natural Gas Act, § 717 et seq. of Title 15, where condemnees raised no question concerning the Act and its interpretations. United Gas Pipe Line Co. v. Brown, E.D.La.1962, 207 F.Supp. 139. Removal Of Cases 19(1)

Action against producer of natural gas sold to plaintiff for transportation and sale in interstate commerce to recover overpayments either on theory that contracts were created by reason of producer's cashing checks with notice that payments were conditional on validity of minimum price orders issued by Kansas and Oklahoma corporation commissions, or that overpayments were made under duress of business compulsion and that plaintiff was entitled to restitution was not founded on a claim arising under Natural Gas Act, § 717 et seq. of Title 15, and regulations of the Federal Power Commission within jurisdiction of federal district court. Northern Natural Gas Co. v. Cities Service Oil Co., S.D.Iowa 1959, 182 F.Supp. 155. **Federal Courts** 2274

Nuclear power and waste, federal question in particular acts and claims

Cause of action brought by Illinois Attorney General under Illinois statutes and common law to enjoin out-of-state utility from shipping spent nuclear fuel into Illinois and to prevent owner of nuclear waste storage facility from receiving it arose under Illinois law, and thus removal of the state court action to **federal court** was unauthorized; fact that Illinois law may have been unconstitutional as applied to the activities was a matter of defense, not a ground for removal, even if it was shown that state laws sued on by plaintiff were totally preempted by federal law. People of State of Ill. v. General Elec. Co., C.A.7 (Ill.) 1982, 683 F.2d 206, certiorari denied 103 S.Ct. 1891, 461 U.S. 913, 77 L.Ed.2d 282. Removal Of Cases 11

State's action for removal from office against county and city officials, on grounds that officials conspired to bring high-level radioactive waste storage site to county in contravention of state policy, was not based on federal right or immunity, for purpose of **removing** action to **federal court**. State of Nev. v. Culverwell, D.Nev.1995, 890 F.Supp. 933. Removal Of Cases 19(1)

Action by county against electric utility, as owner of nuclear power station, and major contractors on the nuclear plant charging that the plant suffered from serious deficiencies in design and construction because of inadequate inspection and seeking legal and equitable relief on theories of negligence, strict liability, breach of warranty, breach of contract, and misrepresentation and concealment was removable from state to **federal court** as complaint was not predicated solely on state common law; relief depended on violation of Atomic Energy Act, § 2011 et seq. of Title 42, and complementing regulations adopted by Nuclear Regulatory Commission and since construction of federal law was pivotal to plaintiff's claims the case met the test for "arising under jurisdiction," notwithstanding that the Act, as presently construed, does not establish a preemptive remedy. Suffolk County v. Long Island Lighting Co., E.D.N.Y.1982, 549 F.Supp. 1250. Removal Of Cases 25(1)

Nuisance, federal question in particular acts and claims

Count of complaint which alleged that Indiana sanitary district had unlawfully dumped raw sewage into Lake Michigan causing injury to People of Illinois set forth cause of action under federal law of nuisance, and, on that basis, complaint was properly **removed** to **federal court**. People of State of Ill. v. Sanitary Dist. of Hammond, N.D.Ill.1980, 498 F.Supp. 166.

Where plaintiffs' action was founded on private nuisance under Oklahoma law and plaintiffs sought to enjoin defendants' use of gas pipeline until it was made to conform with applicable safety standards of Oklahoma law, and construction or interpretation of federal safety standards as adopted by Oklahoma would not support or defeat plaintiffs' action, plaintiffs' action did not arise under Constitution, laws or treaties of the United States and hence was not **removable** to the **federal court**. Baker v. Central & South West Corp., N.D.Okla.1971, 334 F.Supp. 752. Removal Of Cases 25(1)

Patents, federal question in particular acts and claims

Trade secret misappropriation claim asserted by software company against computer manufacturer, did not require resolution of substantial issue of federal patent law, as would give rise to federal jurisdiction over the claim, despite software company's claim that manufacturer incorporated the trade secrets by incorporating them into patent applications that issued as family of related patents. Intellisoft, Ltd. v. Acer America Corporation, C.A.Fed. (Cal.) 2020, 955 F.3d 927, certiorari denied 141 S.Ct. 559, 208 L.Ed.2d 178. **Federal Courts** 2284(5)

Prescription drug purchaser's state court tort claims against manufacturer, whose patents had been declared unenforceable due to inequitable conduct, depended on resolution of substantial questions of federal patent law, and thus were **removable** to **federal court**; complaint's allegations, that manufacturer had fraudulently obtained patents and had engaged in "sham litigation" to enforce them, had not been resolved by prior finding of inequitable conduct. Doran v. Purdue Pharma Co., D.Nev.2004, 324 F.Supp.2d 1147. Removal Of Cases 25(1)

Toy manufacturer's action against former employee, alleging breach of contract and related claims arising from dispute over ownership of patent on toy, did not arise under patent laws and was not **removable** to **federal courts**; all causes of action were couched in terms of state law, and manufacturer disclaimed any intent of raising patent infringement claim. Design Science Toys, Inc. v. McCann, S.D.N.Y.1996, 931 F.Supp. 282. Removal Of Cases 19(6); Removal Of Cases 25(1)

Privacy claims, federal question in particular acts and claims

Server's putative class action against employer for violations of Biometric Information Privacy Act (BIPA) could not have been filed in **federal court**, precluding **removal** of case originally filed in state court; server alleged only violation of BIPA, not that she suffered an injury as a result, and thus failed to meet actual injury requirement for Article III standing. Kiefer v. Bob Evans Farms, LLC, C.D.Ill.2018, 313 F.Supp.3d 966. Federal Civil Procedure 103.2

---- Medicare and Medicaid, public benefits, federal question in particular acts and claims

Action brought by Medicare Advantage Plan beneficiaries in state court asserting state law claims against plan administrator and insurance agent was not **removable** to **federal court** under general federal-question removal statute; even assuming that one of the plaintiffs' claims for relief arose under the Medicare Act, district court would lack subject-matter jurisdiction over complaint because the Medicare Act strips **federal courts** of primary federal-question subject matter jurisdiction over claims that arise under the Act. Dial v. Healthspring of Alabama, Inc., C.A.11 (Ala.) 2008, 541 F.3d 1044. Removal Of Cases 19(1)

State law wrongful death action against private Medicare provider, brought by heirs of deceased Medicare beneficiary, was improperly **removed** to **federal court** since state law claims did not arise under Medicare Act. Ardary v. Aetna Health Plans of California, Inc., C.A.9 (Cal.) 1996, 98 F.3d 496, amended on denial of rehearing, certiorari denied 117 S.Ct. 2408, 520 U.S. 1251, 138 L.Ed.2d 174. Removal Of Cases 19(1)

Health insurer did not act under direction of Centers for Medicare and Medicaid Services (CMS) when it offered Medicare insurance plans while under contract with CMS, and thus medical center's action against insurer under North Carolina law for breach of fiduciary duty, breach of duty of good faith and fair dealing, and unjust enrichment/quantum meruit concerning money that medical center claimed that insurer owed it under Medicare program rules for services rendered was not **removable** to **federal court** under federal officer removal statute; mere fact that insurer was a government contractor did not mean that insurer acted under a federal officer when it offered Medicare plans, and insurer's delegated authority did not rise to necessary level of control for it to have acted at direction of CMS. Halifax Regional Medical Center v. UnitedHealthcare of North Carolina, Inc., E.D.N.C.2021, 2021 WL 601168. Removal of Cases 21

Breach of contract action brought by health care provider in state court against Medicare Advantage Organization (MAO), alleging that MAO failed to pay the proper rate for health care claims and failed to make timely payments, was not **removable** to **federal court** under general federal-question removal statute; even assuming that one of provider's claims for relief arose under the Medicare Act, district court would lack subject-matter jurisdiction over complaint because it was not against the Secretary of the Department of Health and Human Services for review of an administrative decision. Premier Inpatient Partners LLC v. Aetna Health and Life Insurance Company, M.D.Fla.2019, 362 F.Supp.3d 1217. Removal of Cases 19(1)

State public benefit organization's state breach of contract action against licensed health plan, alleging that health plan breached contract with federal agency which required health plan to pay health care providers according to terms and conditions required by Medicare law and regulations by failing to pay organization correct amounts for services organization provided for health plan's Medicare enrollees, raised federal issue, as required to support removal of action to **federal court**; breach of contract claim necessarily raised issue of whether health plan violated Medicare laws and regulations incorporated by reference into its contract with agency. New York City Health and Hospitals Corp. v. WellCare of New York, Inc., S.D.N.Y.2011, 769 F.Supp.2d 250. Removal Of Cases 25(1)

District court lacked original jurisdiction, thus precluding removal from state court, in a contract action brought by a medical services provider challenging an insurer's refusal to pay for the costs of treatment rendered to insureds, despite contention that the provider's claims were preempted by the Medicare Modernization Act; the Act stripped **federal courts** of primary federal-question subject matter jurisdiction over claims arising under that Act, instead providing for an administrative hearing before the Secretary of the Department of Health and Human Services. Solutions Diagnostic Center, Inc. v. Pyramid Life Ins. Co., S.D.Fla.2009, 619 F.Supp.2d 1353. Removal Of Cases 11; Removal Of Cases 19(1); Removal Of Cases 25(1)

Actions brought by states and counties against pharmaceutical companies to recover for fraudulent inflation of drug prices, which caused them to pay excessive reimbursements under Medicaid program, did not fall within district court's federal question jurisdiction, and thus did not permit removal of state court actions against companies, despite statute permitting state and local governments to invoke court's supplemental jurisdiction if actions arose from same transaction or occurrence that gave rise to **federal court** action pursuant to False Claims Act (FCA). In re Pharmaceutical Industry Average Wholesale Price, D.Mass.2007, 509 F.Supp.2d 82. **Federal Courts** 2544; **Removal** Of Cases 19(1)

Removal of suit, claiming that pharmaceutical companies overstated average wholesale price of drugs, causing overpayment by state under Medicaid and Medicare, was improper; no overriding federal interest was implicated, and allowance of removal would disturb balance of judicial responsibilities between state and **federal courts** sought to be established by Congress. State of Wisconsin v. Abbott Laboratories, W.D.Wis.2005, 390 F.Supp.2d 815. Removal Of Cases 19(1)

Federal issue involved in state-law claims brought by Minnesota, under its parens patriae authority on behalf of Medicare beneficiaries, against various pharmaceutical companies, alleging that defendants violated state law by fraudulently misrepresenting prescription-drug prices, was not substantial enough to create federal question jurisdiction, and thus, removal of suit to **federal court** was improper, although claims depended on meaning of "average wholesale price" (AWP) under Medicare, where defendants failed to show that Medicare statute provided a private right of action for AWP misreporting. Montana v. Abbot Laboratories, D.Mass.2003, 266 F.Supp.2d 250, reconsideration denied 278 F.Supp.2d 101. Removal Of Cases 25(1)

Montana's state-law claims for breach of contract against various pharmaceutical companies, alleging that defendants violated federal Medicaid-rebate best-price obligations, arose under federal law, and thus created federal question jurisdiction such that removal of suit to **federal court**, was proper, where claims required interpretation of contracts with the United States governed by federal common law, and if Montana were to prevail on claims, it could result in substantial changes in Medicaid reimbursements paid out by federal government. Montana v. Abbot Laboratories, D.Mass.2003, 266 F.Supp.2d 250, reconsideration denied 278 F.Supp.2d 101. Removal Of Cases 25(1)

---- Social Security, public benefits, federal question in particular acts and claims

Allegations that qualified recipients were being denied a right guaranteed by Social Security Act, § 301 et seq. of Title 42, to receive care at nursing home of their choice and that Kansas Administrative Regulation governing payments for nursing home care was in conflict with Social Security Act was sufficient to establish that action was one arising under federal law and thus properly removable from state to **federal courts**. Seneca Nursing Home v. Kansas State Bd. of Social Welfare, C.A.10 (Kan.) 1974, 490 F.2d 1324, certiorari denied 95 S.Ct. 72, 419 U.S. 841, 42 L.Ed.2d 69. Removal Of Cases 25(1)

Public lands and mining, federal question in particular acts and claims

An action based on violation of Missouri occupational disease statute and Missouri common law duty to furnish an employee a safe place in which to work which resulted in an employee contracting lead poisoning while assisting in razing a federal building at Kansas City, Mo., which stood on land owned by the United States, did not "arise under laws of the United States" so as to authorize removal of the action from state to **federal court**, notwithstanding the laws of Missouri were by § 457 of Title 16 made applicable to the action. Misner v. Cleveland Wrecking Co. of Cincinnati, W.D.Mo.1938, 25 F.Supp. 763. Removal Of Cases 19(1)

Replevin, federal question in particular acts and claims

Where complaint by which plaintiff sought to reclaim property from defendant contained allegations only as to state law replevin action, case was improperly **removed** to **federal court** even though defense might be based on purchase of property at tax sale which would require plaintiff to set aside federal tax sale. Freeman v. Colonial Liquors, Inc., D.C.Md.1980, 502 F.Supp. 367. Removal Of Cases 25(1)

Restitution, federal question in particular acts and claims

Action brought in state court by plaintiff, state motor vehicle administrator, seeking restitution of monies paid pursuant to prior erroneous injunction by federal district court, asserted, at the least, a cause of action under federal as well as state law and, whether or not all of it was based exclusively on earlier occurrences in federal district court and in Supreme Court of United States which directed reversal, was properly **removed** to **federal court**. Johnson v. Alexandria Scrap Corp., D.C.Md.1977, 445 F.Supp. 1171. Removal Of Cases 19(1)

RICO, federal question in particular acts and claims

Investors' claims against securities investment firm for violation of federal civil Racketeer Influenced and Corrupt Organization Act (RICO) could be **removed** to **federal court**, even though state and **federal courts** have concurrent jurisdiction over federal civil RICO claims, where neither civil RICO statute nor removal statute addressed removal. Lichtenberger v. Prudential-Bache Securities, Inc., S.D.Tex.1990, 737 F.Supp. 43. Removal Of Cases 19(5)

Settlements, federal question in particular acts and claims

Suit brought in state supreme court, seeking order to attorney general to inform **federal court** that attorney general is without power to enter into contingent fee agreement with private counsel, could be **removed** to **federal court** as part of court's continuing jurisdiction over settlement of state's litigation against tobacco industry, which included attorney fees award, despite claim that **federal court** could not enjoin state officer from violating state law. In re Fraser, E.D.Tex.1999, 75 F.Supp.2d 572. Removal Of Cases 1

Smoking and tobacco, federal question in particular acts and claims

District court lacked federal question jurisdiction over suit brought by Commonwealth of Massachusetts to recover from tobacco companies Medicaid funds paid to Massachusetts citizens suffering from diseases caused by cigarette smoking; vindication of state's rights would not turn on any construction of federal law, and there was no element of proof in asserted claims that came from source of federal law. Com. of Mass. v. Philip Morris Inc., D.Mass.1996, 942 F.Supp. 690. **Federal Courts** 2257

Stocks and securities, federal question in particular acts and claims--Generally

Complaint alleging violations of state securities registration statutes did not arise under federal law for purposes of federal question jurisdiction, even though elements of state law claim included alleged knowledge of, and failure to comply with, federal securities laws by legal counsel for private stock offering; complaint did not allege that legal counsel violated any specific federal securities laws. Hill v. Marston, C.A.11 (Ala.) 1994, 13 F.3d 1548. **Federal Courts** 2351(1)

---- Investment Company Act, stocks and securities, federal question in particular acts and claims

Complaint by preferred shareholder of investment corporation alleging plan of corporate reorganization was unfair, fraudulent, and violative of provisions of state Corporation Law and § 80a-43 of Title 15, was sufficient to vest jurisdiction in **federal court**, and case was properly removed from state court. Brown v. Eastern States Corp., C.A.4 (Md.) 1950, 181 F.2d 26, certiorari denied 71 S.Ct. 88, 340 U.S. 864, 95 L.Ed. 631. Removal Of Cases 19(1)

---- Securities Act and Exchange Act, stocks and securities, federal question in particular acts and claims

Action brought by securities firms seeking to recover fees they claimed were improperly charged to and paid by them under national securities exchanges' "payment for order flow" programs implicated federal interest sufficiently substantial to establish federal subject matter jurisdiction, as required for removal, since Exchange Act established that **federal courts** had exclusive jurisdiction over actions seeking to interpret and enforce compliance with exchange rules or the Act itself. Citadel Securities, LLC v. Chicago Bd. Options Exchange, Inc., C.A.7 (Ill.) 2015, 808 F.3d 694. Removal of Cases 19(5)

Claim under the Securities Act of 1933, § 77a et seq. of Title 15, though within the original jurisdiction of the **federal court**, was not **removable** on that basis in light of express provision that no case arising thereunder and brought in any state court of competent jurisdiction should be removed, but claim would be removable if the complaint stated another cause of action that would otherwise be removable and was separate and independent. Abing v. Paine, Webber, Jackson & Curtis, D.C.Minn.1982, 538 F.Supp. 1193. Removal Of Cases 19(5); Removal Of Cases 49.1(1)

In action for accounting and other relief, defendant, a resident of Arkansas, was not entitled to remove the case to the **federal court** by alleging that the **federal court** had original jurisdiction under the Federal Securities Act, § 77a et seq. of Title 15, in view of the provision thereof that no case arising thereunder and brought in any state court of competent jurisdiction shall be **removed** to a **federal court**. Willingham v. Creswell-Keith, Inc., W.D.Ark.1958, 160 F.Supp. 741. Removal Of Cases 3

---- Securities Litigation Uniform Standards Act, stocks and securities, federal question in particular acts and claims

Removal of securities class actions with only federal claims was explicitly barred by Securities Act, as amended by Securities Litigation Uniform Standards Act (SLUSA), and therefore **federal courts** had to remand those actions to state court. Electrical Workers Local #357 Pension v. Clovis Oncology, Inc., N.D.Cal.2016, 185 F.Supp.3d 1172. Statutes 1111; Statutes 1152

Securities Litigation Uniform Standards Act (SLUSA) allowed for **removal** to **federal court** of state court class actions alleging violation of Securities Act; if District Court were to remand class actions, there would be concurrent class actions in state and **federal court** asserting similar claims which would lead to considerable confusion and inconsistent results. In re King Pharmaceuticals, Inc., E.D.Tenn.2004, 230 F.R.D. 503. Removal Of Cases 32

---- Miscellaneous claims, stocks and securities, federal question in particular acts and claims

Shareholders' claim that broker-dealers violated state law by manipulating stock price via abusive naked short sales did not necessarily raise issue of federal securities law, and thus shareholders' state court action could not be **removed** to **federal court** on basis of federal question jurisdiction, even though shareholders' complaint asserted that broker-dealers violated federal trading rules and regulations, where shareholders' causes of action did not need to be predicated on violation of federal regulation for them to have chance at recovering under state law. Manning v. Merrill Lynch Pierce Fenner & Smith, Inc., C.A.3 (N.J.) 2014, 772 F.3d 158, certiorari granted 135 S.Ct. 2938, 576 U.S. 1083, 192 L.Ed.2d 975, affirmed 136 S.Ct. 1562, 578 U.S. 374, 194 L.Ed.2d 671. Removal of Cases 25(1)

Former employee's suit against stock exchange, alleging state common-law violations, could not be **removed** to **federal court** based on assertion that federal issues were raised by defense claims that stock exchange was immune from suit and that employee had failed to exhaust administrative remedies provided for under stock exchange and Securities and Exchange Commission (SEC) rules. Barbara v. New York Stock Exchange, Inc., C.A.2 (N.Y.) 1996, 99 F.3d 49. Removal Of Cases 25(1)

Shareholders' state court action seeking declaration that Louisiana Control Share Acquisition Act applied to corporation's voting shares had sufficient federal character to be subject to **removal** to **federal court**, where action called into question prior **federal court** order in which it was found that Act did not apply to corporation. Nowling v. Aero Services Intern., Inc., E.D.La.1990, 734 F.Supp. 733. Removal Of Cases 19(1)

Securities action was properly **removed** to **federal court**, even though causes of action were stated exclusively in terms of state law, considering that same general allegations and factual descriptions of violations contained in state court petition were used by plaintiffs to support federal causes of action in federal complaints in two suits filed in federal district court, and thus a federal claim was necessarily presented. Reid v. Walsh, M.D.La.1985, 620 F.Supp. 930. Removal Of Cases 25(1)

Surface and sea transportation, federal question in particular acts and claims--Generally

Action against shipper brought by owner of rice cargo alleging damage to the rice resulting from negligent provision of storage containers, was **removable** to **federal court**, since action involved provisions of the Harter Act which governs shipper's custody for care of property during the preloading phase. Uncle Ben's Intern. Div. of Uncle Ben's, Inc. v. Hapag-Lloyd Aktiengesellschaft, C.A.5 (Tex.) 1988, 855 F.2d 215. Removal Of Cases 19(5)

---- Interstate Commerce Act, surface and sea transportation, federal question in particular acts and claims

Even though potato shippers and rail carrier had contracted for specific rates and conditions, the Carmack Amendment completely preempted shippers' state-law claims against carrier for damage resulting from carrier's alleged mishandling of potato shipments, and thus, because value of some of shipments exceeded $10,000 amount-in-controversy requirement, complete preemption provided a basis for removing the claims to **federal court**. Schoenmann Produce Co. v. Burlington Northern and Santa Fe Ry. Co., S.D.Tex.2006, 420 F.Supp.2d 757. Carriers 108; Removal Of Cases 25(1); States 18.21

Claim that Interstate Commerce Act preempted State Department of Environmental Management's action alleging violation of state statute was assertion of defense which could not be used to provide federal question jurisdiction for removal purposes.

Commissioner of Indiana Dept. of Environmental Management v. Terre Haute, Brazil & Eastern R.R., Inc., S.D.Ind.1991, 761 F.Supp. 631. **Federal Courts** 2352

The Carmack amendment to the Interstate Commerce Act, § 1 et seq. of Title 49, formed an essential part of plaintiff's action for damages for breach of contract, negligence and outrageous conduct in connection with contract with defendants to ship plaintiff's mobile home trailer from Virginia to Colorado where defendant carrier was a common carrier engaged in transportation of property in interstate commerce pursuant to certification issued by the Interstate Commerce Commission, and removal of case to **federal court** was proper. Sweeney v. Morgan Drive Away, Inc., D.C.Colo.1975, 394 F.Supp. 1216. Removal Of Cases 19(5)

---- Railway Labor Act, surface and sea transportation, federal question in particular acts and claims

Lawsuit brought by airline workers, challenging airline's collection and use of workers' fingerprints in its timekeeping and identification systems as allegedly violative of the Illinois Biometric Information Privacy Act, was properly **removed** to **federal court** based on federal question jurisdiction; it was impossible to litigate under the state law without examining what the union representing airline workers knew and agreed to, implicating provisions of the Railway Labor Act. Miller v. Southwest Airlines Co., C.A.7 (Ill.) 2019, 926 F.3d 898. Labor and Employment 77; Removal of Cases 25(1); States 18.46

Railroad employee's suit against railroad arising out of an alleged interference with employee's right of representation granted under the Railway Labor Act, § 151 et seq. of Title 45, was properly **removed** to **federal court**, since functioning of labor relations process under the Railway Labor Act is the heart of the Act and an area of federal concern, and, on the face of employee's own allegations of violations of his rights under the Act, district court would have had jurisdiction if it had been originally filed in that court after compliance with the Act. Beers v. Southern Pacific Transp. Co., C.A.9 (Cal.) 1983, 703 F.2d 425. Removal Of Cases 19(1)

Under this section providing for **removal** to **federal court** of action founded on claims arising under federal law, claims by defendant-railroad that receivership resulted in taking of its property without due process of law and interfered with exclusive federal power over railroad labor disputes under the Railway Labor Act, § 151 et seq. of Title 45, did not justify removal of case to **federal court**. Debevoise v. Rutland Ry. Corp., C.A.2 (Vt.) 1961, 291 F.2d 379, certiorari denied 82 S.Ct. 123, 368 U.S. 876, 7 L.Ed.2d 77. Removal Of Cases 19(5)

A minor dispute under Railway Labor Act (RLA) brought in state court cannot be properly **removed** since **federal courts** lack original jurisdiction over minor disputes governed by the RLA. Atanasio v. Brotherhood of Locomotive Engineers & Trainmen, E.D.N.Y.2006, 424 F.Supp.2d 476. Removal Of Cases 19(5)

In action filed in state court, defendant may remove that claim to **federal court**, if plaintiff's well-pleaded complaint includes federal cause of action; in context of RLA this rule is broadened, and if state claims put forward are in fact preempted by RLA, action may properly be **removed** to **federal courts** even when plaintiff's complaint does not itself include federal cause of action. Barbanti v. MTA Metro North Commuter R.R., S.D.N.Y.2005, 387 F.Supp.2d 333. Removal Of Cases 25(1)

State law claims of terminated flight attendant, that she was subjected to age and gender employment discrimination, and suffered deprivation of her constitutional rights, were not preempted by Railway Labor Act, converting state claims into federal claims and allowing for removal; there was no showing that types of relief sought by attendant were available under RLA, or that Congress intended preemption in circumstances of case. Mersmann v. Continental Airlines, D.N.J.2004, 335 F.Supp.2d 544, appeal after remand from **federal court** 2006 WL 507842. Civil Rights 1703; Removal Of Cases 25(1); States 18.49

Due to preemptive Railway Labor Act (RLA) arbitration provisions, district court had federal question jurisdiction over airline employee's breach of contract claims against airline, and thus employee's defamation claim against airline was properly removed

under statute authorizing removal of entire case when otherwise non-removable issues and claims were joined with separate and independent claim or cause of action within federal question jurisdiction. Shafii v. British Airways, E.D.N.Y.1995, 895 F.Supp. 451, affirmed in part and vacated in part 83 F.3d 566. **Federal Courts** 2352

Under "well-pleaded complaint" rule, railroad could not remove employees' age discrimination action to **federal court** on basis that Railway Labor Act (RLA) preempted state law claims; employees' claims were based solely on state law, and RLA did not evince congressional intent to completely preempt such claims. Bailey v. Norfolk & Western Ry. Co., S.D.W.Va.1994, 842 F.Supp. 218. Removal Of Cases 25(1)

An action brought by railway employee under Railway Labor Act, § 151 et seq. of Title 45, based upon a claim of improper assessment of discipline is one within original jurisdiction of federal district court as an action "arising under any Act of Congress regulating Commerce" and, if initially brought in state court, is properly **removable** to **federal court**. Beasley v. Union Pac. R. Co., D.C.Neb.1980, 497 F.Supp. 213. **Federal Courts** 2266; **Removal** Of Cases 19(5)

---- Surface Transportation Assistance Act, surface and sea transportation, federal question in particular acts and claims

Complete preemption doctrine did not apply to federal Surface Transportation Assistance Act (STAA), and thus federal removal jurisdiction did not exist over truck driver's state-law whistleblower complaint on that basis; STAA's text included no subsection specifically conferring jurisdiction to **federal courts**, and legislative history of STAA did not contain clear statement of congressional intent to make all claims in that area federal questions for purposes of federal jurisdiction. Dobberowsky v. Cryogenic Transp., Inc., E.D.Mich.1997, 989 F.Supp. 848. Removal Of Cases 25(1)

---- Miscellaneous claims, surface and sea transportation, federal question in particular acts and claims

Although action by Commonwealth of Puerto Rico for misdelivery of cargo transported under contract of carriage covered by federal law was properly commenced in Superior Court of Puerto Rico, it was properly removed on motion of carrier to **federal court**. Com. of Puerto Rico v. Sea-Land Service, Inc., D.C.Puerto Rico 1970, 349 F.Supp. 964. Removal Of Cases 19(5)

Tax claims, federal question in particular acts and claims

Section 7426 of Title 26 permitting suit in **federal court** against United States on claim that property was wrongfully levied on, or sold by, Internal Revenue Service did not cover plaintiff's action against purchaser at federal tax sale to recover timber purchased and therefore plaintiff did not conceal federal question in his complaint and action was not **removable** to **federal court** on that basis. Crow v. Wyoming Timber Products Co., C.A.10 (Wyo.) 1970, 424 F.2d 93. Removal Of Cases 25(1)

State-court action by delinquent taxpayers against city and debt collectors, alleging that debt collectors were not authorized by law to collect tax penalties and that city's ad valorem tax payment-under-protest provisions were unconstitutional, was properly **removed** to **federal court** in its entirety, even though Tax Injunction Act precluded **federal court** from exercising jurisdiction over taxpayers' claims against city, where action would have been removable without inclusion of claims against city. Robert J. Caluda, APLC v. City of New Orleans, E.D.La.2019, 403 F.Supp.3d 522. **Federal Courts** 2036; **Federal Courts** 3164(1)

Investors' action, alleging that investment advisors improperly induced them to participate in illegal tax strategy involving foreign currency option contracts, did not necessarily raise federal issue, and thus was not removable on basis of federal question jurisdiction; investors did not call tax law into question or challenge government's application of that law, but rather challenged, among other things, advisors' interpretation of law and advice to investors in that regard, and assertion of federal question

jurisdiction would not have been consistent with congressional judgment about sound division of labor between state and **federal courts**. Snook v. Deutsche Bank AG, S.D.Tex.2006, 410 F.Supp.2d 519. Removal Of Cases 19(10)

Tax protestor's suit against Internal Revenue Service (IRS) agent, either in his official or individual capacity and alleging use of improper procedures to collect taxes, was **removable** to **federal court**. Connor v. Matthews, N.D.Tex.2001, 134 F.Supp.2d 797. Removal Of Cases 21

Tort claims, federal question in particular acts and claims--Generally

If federal claim has been asserted, **federal court** will have jurisdiction regardless of intention to base an action upon state law of torts, after **removal** to **federal court**. S. & H. Grossinger, Inc. v. Hotel and Restaurant Employees and Bartenders Intern. Union, AFL-CIO, Local 343, S.D.N.Y.1967, 272 F.Supp. 25. Removal Of Cases 19(1)

---- Personal injury, tort claims, federal question in particular acts and claims

Where after personal injury action was instituted in federal district court and dismissed with prejudice after settlement was arrived at between parties, plaintiff instituted separate suit in state court in which he alleged that defendant had converted truck tire which was such valuable piece of evidence in first suit that plaintiff had been compelled to settle that suit for less than its true value, claim in state court action was actually one to recover additional damages for personal injuries and could be viewed as action attacking order of dismissal entered by district court in prior suit; under such circumstances, removal of state court action to **federal court** was proper. Villarreal v. Brown Exp., Inc., C.A.5 (Tex.) 1976, 529 F.2d 1219. Removal Of Cases 19(1)

---- Wrongful death, tort claims, federal question in particular acts and claims

Proof of a violation of Occupational Safety and Health Administration (OSHA) regulations was not a necessary element to any claims made by estate of deceased worker in action against power company, and thus a federal issue was not necessarily raised, as required for **federal court** to have jurisdiction over removed state law claims, even though estate's negligence per se, negligence/wrongful death, and negligence/gross negligence claims were all based, in part, on violations of OSHA regulations; proof that power company violated OSHA regulations was only one method whereby estate could have established that equipment provided to worker was defective, proof that power company violated OSHA regulations would have only served as evidence, not necessarily conclusive proof, that power company was negligent, and negligence per se was simply one theory of establishing the duty and breach elements of wrongful death/negligence and negligence/gross negligence claims. Goforth v. Nevada Power Co., D.Nev.2015, 101 F.Supp.3d 975, on remand 2015 WL 5268242. Removal of Cases 19(1); Removal of Cases 19(5)

---- Miscellaneous claims, tort claims, federal question in particular acts and claims

Action for malicious interference with plaintiff's contractual rights pertaining to a lease was not **removable** to **federal court** under this section even though lease may have been based upon and derived from federal law. Gray v. Oklahoma Land & Cattle Co., N.D.Okla.1965, 240 F.Supp. 646. Removal Of Cases 19(1)

Toxic Substances Control Act, federal question in particular acts and claims

Where plaintiffs' claims seeking damages for property losses and personal injuries which resulted from creation, maintenance and operation of hazardous chemical waste landfill were based solely on state common law of nuisance, defendants' claim of preemption by Toxic Substances Control Act, § 2601 et seq. of Title 15, did not confer jurisdiction on **federal court** so as to justify removal on grounds of federal question. Chappell v. SCA Services, Inc., C.D.Ill.1982, 540 F.Supp. 1087. Removal Of Cases 25(1)

Trademarks, federal question in particular acts and claims

Action instituted in state court for declaration of plaintiff's ownership of, and right to use crocodile emblem, as trademark for toiletries and for injunction against interference with those rights could not be **removed** to **federal court** on theory that, though complaint by its terms was bottomed on declaration for relief under state law, it was intentionally vague and concealed federal nature of the action. La Chemise Lacoste v. Alligator Co., Inc., C.A.3 (Del.) 1974, 506 F.2d 339, 184 U.S.P.Q. 321, certiorari denied 95 S.Ct. 1666, 421 U.S. 937, 44 L.Ed.2d 94, 185 U.S.P.Q. 503, rehearing denied 95 S.Ct. 2408, 421 U.S. 1006, 44 L.Ed.2d 674. Removal Of Cases 25(1)

Substantive state trademark law had not been expressly or impliedly usurped by congressional legislation so as to empower **federal court** to glean federal question in franchisor's otherwise well-pleaded state petition against franchisee under state trade name and trademark laws to permit removal. Johnny's Pizza House, Inc. v. G & H Properties, Inc., W.D.La.1981, 524 F.Supp. 495, 216 U.S.P.Q. 203. Removal Of Cases 25(1)

State action based on alleged infringement of trademark created by state law and seeking to enjoin alleged infringement, not stating federal claim on face of complaint, was not **removable** to **federal court**. Gardner v. Clark Oil & Refining Corp., E.D.Wis.1974, 383 F.Supp. 151, 184 U.S.P.Q. 344. Removal Of Cases 25(1)

Where it appeared from complaint originally filed in state court that plaintiff sought not only to recover on commonlaw theory of an unfair competition but also sought to exercise its private right of recovery under the federal Trademark Law, § 1051 et seq. of Title 15, defendant had right of **removal** to **federal court** which by this section has original jurisdiction of all actions arising under the federal Trademark Law. Touragent Intern., Inc. v. Trans World Airlines, Inc., N.D.Ill.1972, 344 F.Supp. 551, 175 U.S.P.Q. 348. Removal Of Cases 19(1)

Where trademark infringement action was instituted in state court against citizen of such state on complaint which made no mention of, or any showing of, any claim or right arising under law of United States and contained no allegation that alleged infringement involved registered trademark, alleged infringement presented no substantial federal question within federal district court's jurisdiction. Old Reading Brewery v. Lebanon Val. Brewing Co., M.D.Pa.1952, 102 F.Supp. 434, 92 U.S.P.Q. 38. **Federal Courts** 2285

Trusts and estates, federal question in particular acts and claims

District court lacked federal question jurisdiction over action seeking declaration as to proper construction of testamentary trust, and thus Commissioner of Internal Revenue improperly removed case from state court to **federal court**, although determination as to construction of trust could have resulting federal tax implications, where plaintiffs did not seek determination of federal tax liability nor was such determination necessary to resolution of their state law cause of action. Wieland v. Savetz, E.D.Mo.1990, 734 F.Supp. 409. Removal Of Cases 25(1)

---- Federal agencies, United States as party, federal question in particular acts and claims

For purposes of federal question jurisdiction, any claim, even one created by state law, against a federally created corporation arises under federal law. Monsanto Co. v. Tennessee Valley Authority, N.D.Ala.1978, 448 F.Supp. 648. **Federal Courts** 2299

Utilities, federal question in particular acts and claims

Where controversy as to whether Illinois Commerce Commission had jurisdiction over pending reorganization of corporation and two of its subsidiaries arose under S.H.A. ch. 111 $^{2}/_{3}$ § 1 et seq., governing public utilities, rather than under Constitution, treaties or laws of the United States, and administrative action taken by Illinois Commerce Commission could not be maintained in **federal court**, district court lacked federal question jurisdiction even though corporation and subsidiaries had requested declaration that grant of jurisdiction under S.H.A. ch. 11 $^{2}/_{3}$ § 1 et seq. governing public utilities was undue burden of interstate commerce and was therefore violative of U.S.C.A. Const. Art. 1, § 8, cl. 3. Peoples Energy Corp. v. Illinois Commerce Commission, N.D.Ill.1981, 520 F.Supp. 1145. **Federal Courts** 2274; **Federal Courts** 2292

Voting and elections, federal question in particular acts and claims

Dispute arising from recount proceedings in Indiana congressional election was improperly removed from state court to **federal court** since federal law did not so occupy field that any effort to establish legal rules for counting ballots in election necessarily arose under federal law. McIntyre v. Fallahay, C.A.7 (Ind.) 1985, 766 F.2d 1078. Removal Of Cases 101.1

Absent any pleading or argument suggesting conflict with state or federal law or that §§ 113 and 114 of Title 36 incorporating national veterans' organization were in need of interpretation or application, issue as to whether passage of equal rights amendment or organization's bylaws required two-thirds majority of members present at national convention or three-fourths vote of all organization's active members was one over which **federal courts** did not have federal question jurisdiction. Crum v. Veterans of Foreign Wars, D.C.Del.1980, 502 F.Supp. 1377. **Federal Courts** 2270

Eligibility of delegates to national party convention was not within scope of U.S.C.A.Const. Art. 2, § 1 pertaining to formal election of President by electoral college, and thus issue as to eligibility did not, in removed case in which all parties were citizens of same state, give **federal court** jurisdiction under this section providing that removal is permissible if **federal court** would have had jurisdiction over subject matter and parties if action had originally been brought in **federal court**. Wigoda v. Cousins, N.D.Ill.1972, 342 F.Supp. 82. Removal Of Cases 11

Water rights, federal question in particular acts and claims

City's action against rural water district, seeking relief under Kansas statute providing procedure for municipality to purchase a rural water district's facilities within area annexed by municipality, was not removable from state court to **federal court**, despite federal statutory provision preventing a city from encroaching on a federally-indebted rural water district's service area by annexation or otherwise; city had not engaged in artful pleading by failing to plead any federal questions essential to its claim, city's claim was based entirely on state law, sole federal issue arose by way of defense to city's claim, and complete preemption doctrine was not to be applied to facts of present case, as there was no clear congressional intent to create removal jurisdiction. City of Park City, Kan. v. Rural Water Dist. No. 2, Sedgwick County, Kan., D.Kan.1997, 960 F.Supp. 255. Removal Of Cases 25(1)

Complaint in class suit against Bureau of Reclamation officials to establish and prevent interference with common right of class to necessary minimum flow of San Joaquin river through dam constructed and operated under Acts of Congress, which alleged, inter alia, that defendant officials were violating federal laws requiring recognition of state water rights, presented "federal questions" warranting **removal** to **federal court** by defendant officials, especially when defendant officials relied on numerous federal statutes as authorizing their acts. Rank v. Krug, S.D.Cal.1956, 142 F.Supp. 1, affirmed in part, reversed in part on other grounds 293 F.2d 340, on rehearing 307 F.2d 96, certiorari granted 82 S.Ct. 865, 369 U.S. 836, 7 L.Ed.2d 842, certiorari granted 82 S.Ct. 1586, 370 U.S. 936, 8 L.Ed.2d 806, affirmed in part 83 S.Ct. 996, 372 U.S. 627, 10 L.Ed.2d 28, affirmed in part, reversed in part on other grounds 83 S.Ct. 999, 372 U.S. 609, 10 L.Ed.2d 15. Removal Of Cases 25(1)

Miscellaneous claims and acts, federal question in particular acts and claims

Patient's New York law claims against hospital and its operator for malpractice, negligence, and gross negligence, arising from injuries patient allegedly sustained while hospitalized with COVID-19, did not necessarily raise a federal issue, and thus claims could not be **removed** to **federal court** under federal-question "arising under" jurisdiction, where patient's complaint raised claims under New York law and did not, on its face, raise questions of federal law, and although defendants sought to avail themselves of immunity granted under federal Public Readiness and Emergency Preparedness Act (PREP Act), court's inquiry could not be aided by anything alleged in anticipation or avoidance of defenses which defendants might have interposed. Solomon v. St. Joseph Hospital, C.A.2 (N.Y.) 2023, 62 F.4th 54. Removal of Cases 25(1)

Class action dealing with insurance claims flowing from hurricane was properly removed, on ground that Multiparty, Multiforum Trial Jurisdiction Act (MMTJA) provided supplemental jurisdiction over suit, where insurers were defendants in pending class action suit in another federal district court, also dealing with insurance claims flowing from same hurricane; mandatory abstention provision relating to civil actions involving minimal diversity between adverse parties arising from single accident where at least 75 natural persons had died in accident at discrete location applied only to exercise of original jurisdiction, and could not be applied to exercise of supplemental jurisdiction. Wallace v. Louisiana Citizens Property Ins. Corp., C.A.5 2006, 444 F.3d 697. **Federal Courts** 2562

State court action was not **removable** to **federal court** on ground that federal law determined what law the forum state was to apply in determining liability; constitutional limitations formed no part of plaintiff's affirmative claims and case did not "arise under" federal law merely because federal law defined the operative limits of the applicable state rule. Travelers Indem. Co. v. Sarkisian, C.A.2 (N.Y.) 1986, 794 F.2d 754, certiorari denied 107 S.Ct. 277, 479 U.S. 885, 93 L.Ed.2d 253. Removal Of Cases 18; Removal Of Cases 19(1)

Homeowners' claims against subdivision developers under Texas Deceptive Trade Practices Act (DTPA) did not require resolution of a substantial federal issue, as required for federal jurisdiction to exist over state law claim, which arose based on damage to homes sustained during Hurricane Harvey, and thus homeowners' claims were not subject to **removal** to **federal court**; homeowners asserted that developers impliedly warranted that homes were constructed in a manner that placed them outside 500-year floodplain, rather than alleging that floodplain determinations made by Federal Emergency Management Agency (FEMA) were mistaken or improperly performed, and whether developers misrepresented risk of flood damage did not implicate federal law. Alexander v. Woodlands Land Development Company L.P., S.D.Tex.2018, 325 F.Supp.3d 786. **Federal Courts** 2217

Removal to **federal court**, of three Rhode Island actions arising out of nightclub fire, was proper under removal statute; moving defendant was a named defendant in two federal actions brought under Multiparty, Multiforum, Trial Jurisdiction Act (MMTJA) and arising out of same incident. Passa v. Derderian, D.R.I.2004, 308 F.Supp.2d 43. Removal Of Cases 26

DIVERSITY OF CITIZENSHIP

Diversity of citizenship generally

Right to remove state court action to **federal court** on diversity grounds is statutory, and must therefore be invoked in strict conformance with statutory requirements. Somlyo v. J. Lu-Rob Enterprises, Inc., C.A.2 (N.Y.) 1991, 932 F.2d 1043. Removal Of Cases 1

Defendant in otherwise non-diverse state action cannot manufacture federal diversity jurisdiction by removing only part of action to **federal court**. Crucible Materials Corp. v. Coltec Industries, Inc., N.D.N.Y.1997, 986 F.Supp. 130. Removal Of Cases 48

Federal courts look only to plaintiff's pleadings to determine removability, and thus diversity is generally determined from face of complaint. Petrop v. Lassen Art Publications, Inc., D.Hawai'i 1995, 939 F.Supp. 742. Removal Of Cases 47

Federal court has **removal** jurisdiction based on diversity over cases over which it would have had original jurisdiction based on diversity, subject to two limitations: none of the defendants may be a citizen of the state in which district court is located and diversity must exist at time original action was filed as well as at time petition for removal is filed. Kaneshiro v. North American Co. for Life and Health Ins., D.C.Hawai'i 1980, 496 F.Supp. 452. Removal Of Cases 29; Removal Of Cases 43

Although grant of federal jurisdiction in diversity cases has been traditionally explained in terms of providing foreign parties an impartial national tribunal, underlying principle remains that **federal courts** are courts of limited jurisdiction empowered to decide only those matters within the judicial power of the United States and which have been entrusted to them by Congress. City of New York v. New York Jets Football Club, Inc., S.D.N.Y.1977, 429 F.Supp. 987. **Federal Courts** 2015

Residence compared, diversity of citizenship

For purposes of establishing federal jurisdiction on diversity of citizenship, residence and citizenship or domicile are not necessarily synonymous. South Panola Consol. School Dist. v. O'Bryan, N.D.Miss.1977, 434 F.Supp. 750. **Federal Courts** 2405

Complete diversity, diversity of citizenship

If complaint includes some claims that fall within diversity jurisdiction and other claims that do not fall within diversity jurisdiction, case is not **removable** to **federal court**. Blasberg v. Oxbow Power Corp., D.Mass.1996, 934 F.Supp. 21. Removal Of Cases 29

Seller's claim against one natural gas buyer which was not resident of state in which seller instituted action to avoid having to deliver full amount of gas called for in contract to various buyers and to allocate gas available between buyers was not separate and independent from seller's claims against other buyers of natural gas; thus, where another buyer against which action had been instituted was resident of state in which action was brought and complete diversity did not exist with respect to another buyer, nonresident buyer could not remove case against it to **federal court** based upon diversity jurisdiction. Continental Oil Co. v. PPG Industries, Inc., S.D.Tex.1973, 355 F.Supp. 1183. Removal Of Cases 49.1(3)

Diversity jurisdiction requisite to removal of case from state to **federal court** exists if all parties on one side are of citizenship diverse to that of all parties on the other. Cole v. Continental Oil Co., W.D.Okla.1965, 240 F.Supp. 642. Removal Of Cases 29

Complete diversity between parties as opposed in interest is requisite of diversity jurisdiction. Frederick Innkeepers Corp. v. Krisch, D.C.Md.1964, 230 F.Supp. 800. **Federal Courts** 2423

Section 1332 of this title giving federal district court jurisdiction of actions between citizens of different states or foreign states, when considered with this section, requires diversity of citizenship as to all parties, either plaintiff or defendant. Schatte v. International Alliance of Theatrical Stage Emp. and Moving Picture Mach. Operators of U.S. and Canada, S.D.Cal.1949, 84 F.Supp. 669, affirmed 182 F.2d 158, rehearing denied 183 F.2d 685, certiorari denied 71 S.Ct. 64, 340 U.S. 827, 95 L.Ed. 608, rehearing denied 71 S.Ct. 194, 340 U.S. 885, 95 L.Ed. 643. **Federal Courts** 2423

Time of diversity, diversity of citizenship

To render an action **removable** to the **federal court**, on the ground of diversity of citizenship, such diversity must exist both at the beginning of the suit and when the petition for removal is filed. Gibson v. Bruce, U.S.Ohio 1883, 2 S.Ct. 873, 108 U.S. 561, 27 L.Ed. 825. See, also, Kellam v. Keith, Kan.1892, 12 S.Ct. 922, 144 U.S. 568, 36 L.Ed. 544; Jackson v. Allen, La.1889, 10 S.Ct. 9, 132 U.S. 27, 33 L.Ed. 249; Young v. Parker, W.Va.1889, 10 S.Ct. 75, 132 U.S. 267, 33 L.Ed. 352; Stevens v. Nichols, Mo.1889, 9 S.Ct. 518, 130 U.S. 230, 32 L.Ed. 914; Smith v. Akers, Tenn.1886, 6 S.Ct. 669, 117 U.S. 197, 29 L.Ed. 888; Houston & T.C. Ry. Co. v. Shirley, Tex.1884, 4 S.Ct. 472, 111 U.S. 358, 28 L.Ed. 455; Mansfield, C. & L.M.R. Co. v. Swan, Ohio 1884, 4 S.Ct. 510, 111 U.S. 379, 28 L.Ed. 462; Cline v. Belt, D.C.Ky.1942, 43 F.Supp. 538.

While it is true that the existence of federal subject matter jurisdiction over an action removed from state court to **federal court** is normally to be determined as of the time of removal, the critical issue is whether there was complete diversity at any time before the entry of judgment. Brown v. Eli Lilly and Co., C.A.2 (N.Y.) 2011, 654 F.3d 347. Removal of Cases 15

When an action is removed on the basis of diversity, the requisite diversity must exist at the time the action is **removed** to **federal court**; however, in determining whether the jurisdictional requirement has been met in such cases, the court may consider evidence submitted subsequent to the notice of removal, including evidence submitted in conjunction with an opposition to a motion to remand. Campbell v. Hartford Life Ins. Co., E.D.Cal.2011, 825 F.Supp.2d 1005. Removal of Cases 43; Removal of Cases 107(7)

When defendant seeks to remove an action to **federal court** on the basis that parties are of diverse citizenship, diversity of citizenship must be shown to have existed at the time of commencement of action in state court and at the time of filing of petition for removal. Kerstetter v. Ohio Cas. Ins. Co., E.D.Pa.1980, 496 F.Supp. 1305. Removal Of Cases 43

While intervenor will not oust **federal court** of diversity jurisdiction in suits originally filed in that court, removability is determined at time of petition for removal, and prior intervention of a party may defeat diversity jurisdiction requirements. Helms v. Ehe, S.D.Tex.1968, 279 F.Supp. 132. Removal Of Cases 38

Where it was apparent from petition for removal of case from state court to **federal court** that diversity of citizenship was alleged at time of removal but not at time of filing of action in state court, jurisdiction for removal was not present. Garza v. Midland Nat. Ins. Co., S.D.Fla.1966, 256 F.Supp. 12. Removal Of Cases 47

Grounds of diversity of citizenship necessary for removal of case from state to **federal court** must have existed at commencement of suit, and this determination is made at least in part by looking to pleadings on date of filing petition for removal. Lancer Industries, Inc. v. American Ins. Co., W.D.La.1961, 197 F.Supp. 894. Removal Of Cases 43; Removal Of Cases 107(4)

When a case has been removed from state to **federal court**, diversity must exist at time when suit was commenced and when petition for removal is filed. Minnesota Min. and Mfg. Co. v. Kirkevold, D.C.Minn.1980, 87 F.R.D. 317. Removal Of Cases 43

Cure of diversity defects, diversity of citizenship

Requisites for diversity removal were not met where one defendant was resident of the same state as plaintiff and was also a citizen of the state in which the action was brought, but jurisdictional defect was cured prior to judgment of dismissal on the merits where plaintiff voluntarily dropped the party whose presence prevented proper diversity jurisdiction. Local Union 598, Plumbers & Pipefitters Industry Journeymen & Apprentices Training Fund v. J.A. Jones Const. Co., C.A.9 (Wash.) 1988, 846 F.2d 1213, affirmed 109 S.Ct. 210, 488 U.S. 881, 102 L.Ed.2d 202. **Federal Courts** 2424; **Federal Courts** 2454

Forum defendants, diversity of citizenship--Generally

When a plaintiff files in state court a civil action over which the federal district courts would have original jurisdiction based on diversity of citizenship, the defendant or defendants may remove the action to **federal court**, provided that no defendant is a citizen of the state in which action was brought. Caterpillar Inc. v. Lewis, U.S.Ky.1996, 117 S.Ct. 467, 519 U.S. 61, 136 L.Ed.2d 437, on remand 156 F.3d 1230. Removal Of Cases 44

Action involving no federal question cannot be **removed** to **federal court** if any defendant is a resident of the forum state. Day v. Avery, C.A.D.C.1976, 548 F.2d 1018, 179 U.S.App.D.C. 63, certiorari denied 97 S.Ct. 1706, 431 U.S. 908, 52 L.Ed.2d 394. Removal Of Cases 29

Case may be **removed** to **federal court** on basis of diversity of parties only if defendants are not citizens of the forum state; defendant may not **remove** case to **federal court** on basis of diversity when suit was filed in defendant's home state. Brooks v. District of Columbia, D.D.C.1993, 819 F.Supp. 67. Removal Of Cases 45

An action which does not involve a federal question may be **removed** to **federal court** only if none of the parties in interest properly joined and served as a defendant is a citizen of the state in which the action is brought. Hudler v. Wilson, D.C.Colo.1974, 376 F.Supp. 592. Removal Of Cases 29

If plaintiff's complaint does not assert federal right, removal from state to **federal court** may be attained if none of parties in interest properly joined and served as defendants is citizen of state in which action is brought. Appalachian Power Co. v. Region Properties, Inc., W.D.Va.1973, 364 F.Supp. 1273. Removal Of Cases 26

A civil action, except when founded on a claim or right arising under the Constitution, treaties or laws of the United States, is not removable from state to **federal court** 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. Arcady Farms Milling Co. v. Northcutt, E.D.S.C.1949, 87 F.Supp. 373. Removal Of Cases 29

---- No-local-defendant rule, forum defendants, diversity of citizenship

Family businesses incorporated as West Virginia subchapter S corporations were citizens of West Virginia, and thus diversity of citizenship did not exist under the no-local-defendant rule, for purposes of **federal court** jurisdiction in son's breach of contract and tort action against father, stepmother and family businesses, where action was filed in West Virginia. Long v. Long, N.D.W.Va.2007, 509 F.Supp.2d 568. Removal Of Cases 45

---- Waiver, forum defendants, diversity of citizenship

Plaintiff's **federal court** action that it voluntarily dismissed before filing suit in state court did not result in waiver of objection to removal of suit brought in forum where defendants resided. Piper Jaffray & Co. v. Severini, W.D.Wis.2006, 443 F.Supp.2d 1016. Removal Of Cases 106

Fact that diversity suit defendant was citizen of forum state was procedural defect not affecting **federal court's** subject matter jurisdiction, which was waived by plaintiff's failure to timely object to removal. Ravens Metal Products, Inc. v. Wilson, S.D.W.Va.1993, 816 F.Supp. 427. Removal Of Cases 94

---- Miscellaneous cases, forum defendants, diversity of citizenship

Home-state pharmaceutical manufacturers and distributors were entitled to remove products liability actions to **federal court** on the basis of diversity of citizenship after the suits were filed in state court but before any defendant was served, notwithstanding the forum defendant rule under which a suit that is otherwise removable solely on the basis of diversity of citizenship 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, and despite variations in state service requirements; actions were transferred into multi-district litigation (MDL) following removal. Gibbons v. Bristol-Myers Squibb Company, C.A.2 (N.Y.) 2019, 919 F.3d 699. Removal of Cases 45

The forum defendant rule barred removal of state court action brought in Pennsylvania by consumer, a citizen of Florida, against manufacturer and others, several of whom were citizens of Pennsylvania, seeking to recover for injuries consumer allegedly suffered from the insertion and removal of an intrauterine device (IUD), even though the defendants filed the notice of **removal** in the **federal court** before being served with the complaint, where defendants filed a copy of the notice of removal in the state court after they were served. Brown v. Teva Pharmaceuticals, Inc., E.D.Pa.2019, 414 F.Supp.3d 738. Removal of Cases 45

State court action against airline was not **removable** to **federal court**, even though complete diversity of citizenship existed, where airline was citizen of **federal court's** forum state. Cartegena v. Continental Airlines, Inc., S.D.Tex.1997, 10 F.Supp.2d 677. Removal Of Cases 26

Although state court action alleging that plaintiff was injured while working on barge floating in navigable waters fell within federal district court's original and exclusive jurisdiction in admiralty, it could not be **removed** to **federal court** where two of the defendant corporations were incorporated in the forum state and therefore had to be treated as Louisiana residents for removal purposes. Pittman v. Port Allen Marine Services, M.D.La.1992, 794 F.Supp. 593. Removal Of Cases 45

Since one defendant was citizen of state in which action was brought, removal of case to **federal court** was not possible under this section providing for removal of action only if none of parties in interest properly joined and served as defendants is citizen of state in which such action is brought. Sugar Corp. of Puerto Rico v. Environeering, Inc., D.C.Puerto Rico 1981, 520 F.Supp. 996. Removal Of Cases 29

Where one of the defendants properly joined and served in quiet title action was a citizen of the state in which the action was brought, action could not be **removed** to **federal court** on ground that such court had original diversity jurisdiction. Hudler v. Wilson, D.C.Colo.1974, 376 F.Supp. 592. Removal Of Cases 29

Even if nonresident plaintiff's initial complaint which was filed in state court had established diversity jurisdiction, removal of case to **federal court** by resident defendant would have been improper. American Oil Co. v. Egan, D.C.Minn.1973, 357 F.Supp. 610. Removal Of Cases 45

Change of citizenship, diversity of citizenship

Plaintiff in action which had been removed to federal district court could not defeat otherwise valid diversity jurisdiction by its act of incorporating in defendant's home state only a few days before filing of action for express purpose of circumventing diversity jurisdiction. Douglas Energy of New York, Inc. v. Mobil Oil Corp., D.C.Kan.1984, 585 F.Supp. 546. **Federal Courts** 2439

Where sole motive for incorporating plaintiff corporation in Delaware and in transferring fractional interest in property to it was to prevent action which plaintiffs contemplated from being removed from state to **federal court**, district court had authority to ignore transaction and maintain jurisdiction. Picquet v. Amoco Production Co., M.D.La.1981, 513 F.Supp. 938. **Federal Courts** 2435

Service of process, diversity of citizenship--Generally

Removal of consumers' product liability actions against manufacturer of blood thinning drug was permissible under forum defendant rule, which prohibited removal based on diversity jurisdiction if any of the defendants who had been properly joined and served was a citizen of the state where the action was brought, and thus court would not remand actions to state court, even though defendants were citizens of forum state, where defendants had not been served at time they **removed** actions to **federal court**. Cheung v. Bristol-Myers Squibb Company, S.D.N.Y.2017, 282 F.Supp.3d 638, affirmed 919 F.3d 699. **Federal Courts** 2001

Section of removal statute which provides that civil action is **removable** to **federal court** only if none of "properly joined and served" defendants is citizen of state in which action was brought does not require court to disregard citizenship of foreign defendants in determining whether diversity jurisdiction exists if those defendants have not yet been served with process; rather, that provision is further limitation on removal jurisdiction, insofar as action in which there exists complete diversity of citizenship is still not removable if a defendant is a citizen of state in which action was originally brought. Zaini v. Shell Oil Co., S.D.Tex.1994, 853 F.Supp. 960. Removal Of Cases 45

Defendants in a diversity action could remove the action to **federal court** before service was effected upon codefendants who resided in the state where the action was filed. Wensil v. E.I. Dupont De Nemours and Co., D.S.C.1992, 792 F.Supp. 447. Removal Of Cases 79(1)

The fact that a defendant has not been served is irrelevant to the court's determination of whether it has jurisdiction over the action based on complete diversity of citizenship. Kelly v. Drake Beam Morin, Inc., E.D.Mich.1988, 695 F.Supp. 354. **Federal Courts** 2423

---- Miscellaneous cases, service of process, diversity of citizenship

Voluntary dismissal without prejudice was warranted, in personal injury action brought by widow of motorist who died after his vehicle was struck by tractor-trailer, which was **removed** to **federal court** on basis of diversity jurisdiction, where removal was only permitted because non-forum defendants accomplished removal before the forum defendant was served by exploiting widow's courtesy in sending them copies of the complaint before action was filed, and because of state court's delay in processing widow's diligent request for service, and there was no showing that widow or her counsel acted in bad faith or fraudulently joined the forum defendant, or that defendants would suffer any prejudice from voluntary dismissal. Goodwin v. Reynolds, C.A.11 (Ala.) 2014, 757 F.3d 1216. Removal of Cases 108

Pursuant to the forum defendant rule, certain defendants' act of filing notice of removal within two business days after filing of lawsuit, and before service could be perfected on defendants who were citizens of the forum state, in order to accomplish removal prior to receiving notice through service, was ineffective to establish **federal court** jurisdiction on basis of diversity of citizenship; defendants were engaging in a kind of gamesmanship that violated intent and purpose of the rule. Schilmiller v. Medtronic, Inc., W.D.Ky.2014, 44 F.Supp.3d 721. Removal of Cases 45

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removal prior to receiving notice through service, was ineffective to establish **federal court** jurisdiction on basis of diversity of citizenship; defendants were engaging in a kind of gamesmanship that violated intent and purpose of the rule. Goffner v. Medtronic, Inc., W.D.Ky.2014, 41 F.Supp.3d 604. Removal of Cases 45

Residency, in forum state, of driver of package-delivery truck was not an obstacle to removal of the action to **federal court** in the forum state, based on diversity of citizenship, where driver, while named as a defendant in the personal injury action, was not served with process. Clawson v. FedEx Ground Package System, Inc., D.Md.2006, 451 F.Supp.2d 731. Removal Of Cases 45

Toy company executive, as resident defendant, was properly served within meaning of statute precluding removal of diversity case if party in interest properly joined and served as defendant was citizen of state in which action was brought when process was delivered to executive's office in accordance with state law and proof of service was filed in state court before notice of removal was filed, even though, under state procedures, service was not deemed "complete" until after notice of removal was filed, in that **federal court** jurisdiction was not dependent upon technicality of state procedure requiring 10 days after filing of proof of service for service to be deemed "complete," and filing of proof of service put all parties, including removing toy company, on notice of service on executive. Stan Winston Creatures, Inc. v. Toys "R" Us, Inc., S.D.N.Y.2003, 314 F.Supp.2d 177. **Federal Courts** 3025(5); **Removal** Of Cases 45

Presence of Louisiana defendant operated to defeat diversity and prevent removal from state court, notwithstanding that defendant was not served with process when case was removed, where suit was not originally cognizable in **federal court** in that there was not complete diversity between named opposing parties. Schwegmann Bros. Giant Super Markets, Inc. v. Pharmacy Reports, Inc., E.D.La.1980, 486 F.Supp. 606. Removal Of Cases 29

Where plaintiff was a citizen of Oklahoma, and defendant insurer was not a citizen of Oklahoma, and none of other defendants had been served with summons, insurer was entitled to remove the case to **federal court**. Robertson v. Nye, W.D.Okla.1967, 275 F.Supp. 497. Removal Of Cases 29

---- Real party in interest, necessary or indispensable parties, diversity of citizenship

Question of whether state was real party in interest in action for breach of construction contract commenced in state court and sought to be **removed** to **federal court** on ground of diversity of citizenship was not to be determined merely by the names of titular parties but by the essential nature and effect of proceeding as it appears from entire record. State of W.Va. v. Haynes, S.D.W.Va.1972, 348 F.Supp. 1374. Removal Of Cases 26

---- Proper parties, necessary or indispensable parties, diversity of citizenship

State agencies were not proper defendants under removal statute, but, rather, were stakeholders to school district's action in state court appealing administrative order finding that district failed to provide special education student with free appropriate public education (FAPE), and as such, state agencies were, at best, merely nominal parties to the proceeding, and thus, student's parents, who had brought their own action in **federal court** seeking review of administrative order, were not required to have consent of the Office of Administrative Hearings or the Attorney General's Office before removing district's state action to **federal court**. Evergreen School Dist. v. N.F., W.D.Wash.2005, 393 F.Supp.2d 1070. Removal Of Cases 30; Removal Of Cases 82

Citizenship of nondiverse defendant who is a proper even though not an indispensable party must be considered when determining existence, of diversity jurisdiction and in assessing **removal** jurisdiction of **federal courts**. Dailey v. Elicker, D.C.Colo.1978, 447 F.Supp. 436. **Federal Courts** 2427; **Removal** Of Cases 31

---- Nominal parties, necessary or indispensable parties, diversity of citizenship

Joinder of formal or unnecessary parties cannot prevent removal of action to **federal court**. Nunn v. Feltinton, C.A.5 (Tex.) 1961, 294 F.2d 450, certiorari denied 82 S.Ct. 829, 369 U.S. 817, 7 L.Ed.2d 784, rehearing denied 82 S.Ct. 932, 369 U.S. 857, 8 L.Ed.2d 16. Removal Of Cases 30; Removal Of Cases 31

Presence of nominal or formal or unnecessary parties has no controlling significance for removal purposes, and the joinder of such parties cannot prevent removal of action to **federal court**. Aberle Hosiery Co. v. American Arbitration Ass'n, E.D.Pa.1972, 337 F.Supp. 90, appeal dismissed 461 F.2d 1005. Removal Of Cases 31

Mere nominal or formal parties will be disregarded in determining if diversity jurisdiction exists so that case can be **removed** to **federal court**. Helms v. Ehe, S.D.Tex.1968, 279 F.Supp. 132. Removal Of Cases 30

For purposes of determining whether requisite diversity of citizenship exists for jurisdiction of **federal court**, citizenship of real parties in interest is looked to and citizenship of nominal or formal parties having no real interest in the controversy is disregarded. Cole v. Continental Oil Co., W.D.Okla.1965, 240 F.Supp. 642. See, also, Colman v. Shimer, D.C.Mich.1958, 163 F.Supp. 347. **Federal Courts** 2428

---- Declaratory judgment actions, necessary or indispensable parties, diversity of citizenship

Trustee had notice that action by purchaser of real property pursuant to foreclosure proceedings under deed of trust was removable based on complete diversity of parties upon receipt of service of purchaser's complaint alleging that trustee's deed was extinguished by foreclosure sale and that trustee's deed was no longer lien on purchaser's property, even though purchaser's complaint named second trustee as defendant and both purchaser and second trustee resided in same state, since trustee could have filed notice of removal on basis that second trustee was nominal party whose citizenship could be disregarded even before parties entered agreed nominal party order in state court, and parties could have litigated nominal party status in **federal court**, if they had disagreed. Jolley v. U.S. Bank, N.A. as Trustee for RMAC Trust, Series 2016-CTT, E.D.Va.2019, 362 F.Supp.3d 340. Removal of Cases 30; Removal of Cases 86(2)

---- Landlord and tenant actions, necessary or indispensable parties, diversity of citizenship

Mineral lease assignor who reserved certain production payments was indispensable party to action by lessor to cancel lease for alleged failure to pay delay rentals when due, and **federal court** to which the action had been removed lacked diversity jurisdiction in view of Oklahoma citizenship of assignor and lessor. Cole v. Continental Oil Co., W.D.Okla.1965, 240 F.Supp. 642. **Federal Courts** 2427; Mines And Minerals 78.7(2)

Where plaintiff Maryland corporation alleged that defendant Maryland citizen as agent for plaintiff's lessees, Kentucky citizens, and acting in their behalf, forcibly and unlawfully retained possession of premises, defendant who was resident of Maryland was neither merely nominal nor "formal party" but he was a "proper party", though not a "necessary party" nor "indispensable party," and, accordingly, requisite diversity of citizenship for federal jurisdiction was lacking. Frederick Innkeepers Corp. v. Krisch, D.C.Md.1964, 230 F.Supp. 800. **Federal Courts** 2428

---- Personal injury actions, necessary or indispensable parties, diversity of citizenship

Family attacked during a home invasion failed to state a negligence claim under Texas law against non-diverse employee of home security company, and thus joinder of employee was improper and did not defeat **removal** to **federal court** on diversity grounds, in family's personal injury suit against company; family's petition made only one reference to employee, identifying

him as a citizen of Texas, district court could not consider additional facts included in family's motion to remand and during status conference, and court could not consider possibility that family could cure defects in an amended pleading. Berry v. ADT Security Services, Inc., S.D.Tex.2019, 393 F.Supp.3d 548. Removal of Cases 36

Uninsured motorist was not nominal party in pedestrian's action against motorist to recover for personal injuries sustained when she was allegedly struck by motor vehicle and against her automobile insurer for bad faith failure to settle, and thus insurer could not **remove** action to **federal court** on basis of diversity jurisdiction, even though motorist did not possess assets of particular value, had not entered appearance, and was not represented by counsel, where motorist testified at deposition that he had not struck pedestrian, and motorist's employment record suggested that pedestrian, in event of favorable judgment, might have opportunity to garnish his wages to obtain partial satisfaction of judgment. Spencer v. Harris, S.D.W.Va.2005, 394 F.Supp.2d 840. Removal Of Cases 30

---- Stocks and securities actions, necessary or indispensable parties, diversity of citizenship

Named defendant corporation and its transfer agent were merely "nominal" or "formal" parties whose presence did not preclude removal of action to **federal court** on diversity of citizenship ground, where the corporation and transfer agent were joined as defendants only to prevent their transferring and re-registering shares of corporation's stock against which adverse ownership claims had been made, and to obtain judgment directing them to surrender shares and pertinent stock powers to plaintiff, and for no other substantive purpose. Pesch v. First City Bank of Dallas, N.D.Tex.1986, 637 F.Supp. 1530. Removal Of Cases 30

---- Trusts and estates actions, necessary or indispensable parties, diversity of citizenship

Estate and successors of patient who died after stay in nursing facility stated claim under California's Elder Abuse and Dependent Adult Civil Protection Act against non-diverse facility administrator, and thus administrator was properly joined and defeated diversity removal of California state court action, where estate and successors alleged that administrator was managing agent of facility operator, responsible for day-to-day operations, that patient was over 65 at all relevant times, that there were several failures to protect from health or safety hazards, and that patient died after she suffered preventable fall and facility delayed for over 18 hours before taking her to hospital. Grancare, LLC v. Thrower by and through Mills, C.A.9 (Cal.) 2018, 889 F.3d 543. **Federal Courts** 2450

---- Miscellaneous actions, necessary or indispensable parties, diversity of citizenship

State Stadium and Exposition District had not been joined to suit, brought by investors against corporation seeking damages arising out of corporation's efforts to acquire professional basketball team, for purpose of defeating removal by creating nondiversity of citizenship; District had admitted that it was necessary or indispensable party to proceedings and had denied consent to any participation in **federal court** case. Shorty v. Top Rank of Louisiana, Inc., E.D.La.1995, 876 F.Supp. 838. Removal Of Cases 36

Fictitious defendants, diversity of citizenship--Generally

Fictitiously named defendants are not necessarily "nominal" parties for purposes of determining whether diversity jurisdiction exists. Abels v. State Farm Fire & Cas. Co., C.A.3 (Pa.) 1985, 770 F.2d 26. **Federal Courts** 2428

A case that asserts only state claims and has only one party due to the defendant being an unknown "John Doe" may not proceed initially in **federal court**, inasmuch as the amendment to the removal statute declaring that the presence of defendants sued under fictitious names does not defeat removal jurisdiction was not applicable in original diversity jurisdiction cases. McMann v. Doe, D.Mass.2006, 460 F.Supp.2d 259. **Federal Courts** 2428

When complaint asserts no claim of any kind against a John Doe defendant, his presence in the action cannot destroy diversity jurisdiction. Portis v. Sears, Roebuck & Co., E.D.Mo.1985, 621 F.Supp. 682. **Federal Courts** 2428

---- Retroactive effect of amendments, fictitious defendants, diversity of citizenship

Statute providing that for removal purposes the citizenship of defendant sued under fictitious name shall be disregarded did not extend to cases originally filed by plaintiffs in **federal court**, for purposes of determining whether diversity of citizenship was sufficiently alleged to support federal jurisdiction. Salzstein v. Bekins Van Lines, Inc., N.D.Ill.1990, 747 F.Supp. 1281. Removal Of Cases 30

---- Allegation of citizenship, fictitious defendants, diversity of citizenship

Personal injury suit which employee brought against employer and a Jane Doe defendant, a fictitious name for a nurse employed in employer's dispensary, charging negligent administration of whirlpool treatment to plaintiff's hand and wrist was improperly **removed** to **federal court** on basis of diversity of citizenship where the employer failed to establish diversity between plaintiff and the Jane Doe defendant, notwithstanding plaintiff's failure to serve the Jane Doe defendant with process or allege her citizenship. Pecherski v. General Motors Corp., C.A.8 (Mo.) 1981, 636 F.2d 1156. Removal Of Cases 30

Nonresident defendant, who sought to **remove** to **federal court** an action filed in Ohio state court, made no showing of residence of John Doe defendant, who was properly joined as party and whose relationship to nonresident defendant and negligence as employee were alleged, and nonresident defendant made no showing that naming of John Doe defendant was sham, so that **federal court** lacked **removal** jurisdiction because of absence of complete diversity. Ramski v. Sears, Roebuck and Co., N.D.Ohio 1987, 656 F.Supp. 963. Removal Of Cases 47

---- Identity, fictitious defendants, diversity of citizenship

In unfair competition action against aircraft manufacturer and 20 Does, allegation that Does "participated in the acts hereinafter complained of, either by ratifying them, or cooperating in them, or otherwise * * *" was insufficient to identify unnamed defendants and could not defeat diversity jurisdiction. Hartwell Corp. v. Boeing Co., C.A.9 (Cal.) 1982, 678 F.2d 842. **Federal Courts** 2472(1)

Where there was no attempt to designate role or identity of Doe defendants, such defendants would be disregarded in determining whether diversity of citizenship existed for purposes of removal of state action to **federal court**. Jong v. General Motors Corp., N.D.Cal.1973, 359 F.Supp. 223. Removal Of Cases 26

---- Shams, fictitious defendants, diversity of citizenship

District court had jurisdiction over case removed from state to **federal court** in which district court granted summary judgment for defendant, and Court of Appeals accordingly had jurisdiction to hear appeal from that judgment, although when case was removed the complaint asserted claims against Doe defendants; district court ruled that the Does referred to in complaint were shams, so it retained jurisdiction because there was complete diversity between named parties, district court ruling was made before Court of Appeals' decision overruling sham Doe exception in the circuit, and because of the ruling Does were shams, that was tantamount to striking the Doe allegations, complete diversity between named parties existed at the time summary judgment was granted. Johnson v. Mutual Ben. Life Ins. Co., C.A.9 (Cal.) 1988, 847 F.2d 600. Courts 100(1); Removal Of Cases 29; Removal Of Cases 107(9)

Fact that plaintiff's motive for joining Doe defendant is to defeat diversity is not indicative of fraudulent joinder. Abels v. State Farm Fire & Cas. Co., C.A.3 (Pa.) 1985, 770 F.2d 26. **Federal Courts** 2450

Employees who were California residents were sham defendants whose presence in suit brought against employer by another employee claiming breach of employment contract did not destroy diversity jurisdiction; as suing employee had stated in pleadings that resident employees were acting at all times within scope of their duties, no cause of action could be stated against those employees individually under California law. Zogbi v. Federated Dept. Store, C.D.Cal.1991, 767 F.Supp. 1037. **Federal Courts** 2450

---- Substitution of identifiable defendant, fictitious defendants, diversity of citizenship

Presence of nondiverse party divested **federal court** of diversity of citizenship jurisdiction [28 U.S.C.A. § 1441], necessitating remand of removed case to state court, where plaintiff substituted for John Doe defendant an identifiable defendant of common citizenship with plaintiff against whom actual recovery was sought and against whom plaintiff could, under forum law, recover on certain factual showing, despite contention of remaining defendant that the substituted defendant was not an indispensible party to the suit since remaining defendant could adequately defend itself without the substituted defendant, who was alleged servant of the remaining defendant. Portis v. Sears, Roebuck & Co., E.D.Mo.1985, 621 F.Supp. 682. Removal Of Cases 102

---- Miscellaneous cases, fictitious defendants, diversity of citizenship

Personnel manager of prospective employer, identified only as “Jane Doe” was not a defendant whose citizenship would be considered in determining whether **federal court** had diversity jurisdiction over suit alleging that applicant had been rejected for employment due to handicap. Alexander v. Electronic Data Systems Corp., C.A.6 (Mich.) 1994, 13 F.3d 940, on remand 870 F.Supp. 749. **Federal Courts** 2428

Fraudulent joinder, diversity of citizenship--Generally

Amended complaint filed by family members of nursing home residents who allegedly died of complications related to COVID-19, naming individual, non-diverse employees of the nursing home, including nursing home administrator and other staff members, thereby defeating diversity jurisdiction, was proper, and was not required to be disregarded as fraudulent joinder, in family members' negligence action against operator of nursing home; there was no showing that claims against nondiverse defendants were wholly insubstantial or frivolous, family members signaled their clear intent to include individual employees by naming “Doe” defendants in initial complaint, nondiverse defendants were named about 16 days after removal, and family members would be prejudiced if amendment was denied. Hereford v. Broomall Operating Company LP, E.D.Pa.2021, 575 F.Supp.3d 558. **Federal Courts** 2450

Former manager did not have actual malice towards former employee when making statement in presence of second manager, that termination decision was based on inability to perform the essential functions of job by former employee who had been working on workers' compensation restrictions for six months following return to work from medical leave for knee surgery to repair workplace injury to knee, such that common interest conditional privilege applied to defeat a viable or non-fanciful defamation claim against former manager under California law, and thus fraudulent joinder of former manager did not defeat removal of former employee's disability discrimination claim from state court to **federal court** on diversity grounds. Narayan v. Compass Group USA, Inc., E.D.Cal.2018, 284 F.Supp.3d 1076. Libel and Slander 51(4)

Under doctrine of fraudulent joinder, plaintiff may not defeat a **federal court's** diversity jurisdiction and a defendant's right of removal by merely joining as defendants parties with no real connection with the controversy. Sherman v. A.J. Pegno Constr. Corp., S.D.N.Y.2007, 528 F.Supp.2d 320. Removal Of Cases 36

Fraudulent joinder, for purpose of destroying diversity and preventing removal of state court action to **federal court**, exists where a plaintiff has failed to plead under state law any specific actionable conduct against non-diverse defendants. Jones v. American Home Products Corp., E.D.Tex.2004, 344 F.Supp.2d 500. Removal Of Cases 36

"Fraudulent joinder," as will allow **federal court** to hear state law claim against nonresident defendant despite lack of diversity between plaintiff and fraudulently joined defendant, consists of false allegations of jurisdictional fact, or claim against resident defendant which simply has no chance of success. County of Cook v. Mellon Stuart Co., N.D.Ill.1992, 812 F.Supp. 793. Removal Of Cases 36

Right of a defendant as to whom diversity of citizenship exists to remove a cause to **federal court** cannot be defeated by fraudulent joinder of a resident defendant having no real connection with the controversy. Chumley v. Great Atlantic & Pacific Tea Co., M.D.N.C.1961, 191 F.Supp. 254. Removal Of Cases 36

---- Considerations governing, fraudulent joinder, diversity of citizenship

Statement by attorney for plaintiff, that plaintiff would be looking to oil company for satisfaction of its judgment and not to Kansas employee of independent contractor for oil company, did not provide basis for finding fraudulent joinder under subjective test for determining whether court had diversity jurisdiction; statement necessarily presumed some choice in satisfaction of judgment which would not have been possible absent existence of judgment against both oil company and employee. City of Neodesha, Kansas v. BP Corporation North America Inc., D.Kan.2005, 355 F.Supp.2d 1182, appeal after remand from **federal court** 287 P.3d 214, 295 Kan. 298. **Federal Courts** 2450

In determining whether parties were fraudulently joined to defeat diversity jurisdiction, district court must evaluate all factual allegations in light most favorable to plaintiff, resolving all contested issues of substantive fact in favor of plaintiff; in this context, proceeding is similar to that used for ruling on motion for summary judgment. Naef v. Masonite Corp., S.D.Ala.1996, 923 F.Supp. 1504. **Federal Courts** 2477

Existence of fraudulent joinder to defeat diversity jurisdiction is determined under reasonableness standard; defendant must show that plaintiff has no reasonable basis for claim against nondiverse defendant in state court based on the alleged facts. Ludwig v. Learjet, Inc., E.D.Mich.1993, 830 F.Supp. 995. **Federal Courts** 2450; **Removal** Of Cases 107(7)

---- Disregard of citizenship, fraudulent joinder, diversity of citizenship

Even where diversity of citizenship is not complete, a **federal court** may disregard the citizenship of a diversity-defeating defendant on removal when that defendant has been fraudulently joined. Asperger v. Shop Vac Corp., S.D.Ill.2007, 524 F.Supp.2d 1088, reconsideration denied 2007 WL 4247423. Removal Of Cases 36

If defendant is fraudulently joined, her residency is disregarded for purposes of determining diversity jurisdiction. Reeb v. Wal-Mart Stores, Inc., E.D.Mo.1995, 902 F.Supp. 185. **Federal Courts** 2450

Federal courts have power and duty in protecting their jurisdiction, to inquire into and to ignore joinder of parties defendant against whom no real cause of action is alleged and who are joined in order to defeat federal jurisdiction. Erdey v. American Honda Co., Inc., M.D.La.1983, 96 F.R.D. 593, on reconsideration in part 558 F.Supp. 105. **Federal Courts** 2450

Joinder of nondiverse defendant, although fair on its face, may be shown by petition for removal to be only a fraudulent device to prevent removal, and in such circumstances **federal court** may disregard joinder and retain jurisdiction. Lewis v. Time Inc., E.D.Cal.1979, 83 F.R.D. 455, affirmed 710 F.2d 549. Removal Of Cases 36

---- Improper joinder, fraudulent joinder, diversity of citizenship

District court, upon determining that nondiverse defendant was improperly joined to destroy diversity jurisdiction, as basis for removal, lacked jurisdiction to grant nondiverse defendant's motion to dismiss for failure to state a claim, which grant operated as an adjudication on the merits and a dismissal with prejudice; rather, nondiverse defendant's motion to dismiss should have been denied as moot, because once the district court determined that nondiverse defendant was improperly joined, the district court effectively dismissed plaintiff's claims against him without prejudice. International Energy Ventures Management, L.L.C. v. United Energy Group, Ltd., C.A.5 (Tex.) 2016, 818 F.3d 193. **Federal Courts** 2454; **Removal** of Cases 36; Removal of Cases 39

Officers' and directors' insurer failed to meet its heavy burden of establishing that it was improperly joined, as would permit **removal** to **federal court** based on diversity jurisdiction when plaintiff investor and defendant insurer were citizens of the same state, in breach of fiduciary duty action under Louisiana law arising from investor's business partner allegedly failing to maintain adequate reinsurance on insurance company investor invested in; insurer did not brief argument that officers' and directors' policy proceeds were property of estate for bankruptcy purposes, nor did it advance other arguments in support of argument that it should have been dismissed from matter. Pellegrini v. Toffoli, E.D.La.2022, 2022 WL 16833695. Removal of Cases 107(.5)

Eleventh Amendment's state sovereign immunity did not prohibit the district court from considering owners and operators of industrial valve manufacturing facility's claim that State of Louisiana, through the Department of Environmental Quality (DEQ), was improperly joined as defendant by landowners who brought property damage claims against facility alleging groundwater and soil contamination caused by facility's improper disposal of solvents, cutting oils, acids, and caustics; application of Eleventh Amendment's state sovereign immunity in **federal court** would significantly undermine the improper joinder doctrine to defeat federal jurisdiction. D & J Investments of Cenla LLC v. Baker Hughes A GE Co., LLC, W.D.La.2020, 501 F.Supp.3d 389, amended on reconsideration in part 2020 WL 10866999, certification granted 2021 WL 3553509, affirmed in part, vacated in part 52 F.4th 187. **Federal Courts** 2392

Patient's medical malpractice claims against healthcare providers were improperly joined with product liability claims against nondiverse medical device manufacturer, warranting severing and remanding the medical malpractice claims, where claims did not arise out of the same occurrence, as the factual basis for claims against manufacturer pertained to the research, development, production, and marketing of mid-urethral sling system, whereas the factual basis for claims against healthcare providers pertained to patient's treatment for urological complaints. Smith v. Hendricks, D.D.C.2015, 140 F.Supp.3d 66. **Federal Courts** 2454

---- Motive and intent, fraudulent joinder, diversity of citizenship

A state court proceeding which was identical to a state court action that had been **removed** to **federal court** except that it added two defendants who were residents of forum state and who were known to plaintiff at time he first filed suit and could have been joined at that time would be enjoined where plaintiff joined additional defendants only after removal and sought no further damages from them, indicating that his sole purpose in joining them was to defeat removal. Myers v. Hertz Penske Truck Leasing, Inc., N.D.Ga.1983, 572 F.Supp. 500. Courts 508(8)

---- Good faith, fraudulent joinder, diversity of citizenship

Bad faith or collusion in joining a resident defendant for sole purpose of preventing removal of case from state court to **federal court** may be shown by any means available. Preas v. Phebus, C.A.10 (Utah) 1952, 195 F.2d 61. Removal Of Cases 36

---- Pleadings, fraudulent joinder, diversity of citizenship

Allegation of fraudulent joinder of nondiverse defendant, which was raised in response to a motion to remand case **removed** to **federal court** did not provide a basis for federal jurisdiction based on diversity. Phillips v. BJ's Wholesale Club, Inc., E.D.Va.2008, 591 F.Supp.2d 822. Removal Of Cases 94

For purposes of determining if case should be **removed** to **federal court**, district court may "pierce" the pleadings and consider summary judgment-type evidence. Weil on Behalf of Weil v. Browning Arms Co., Inc., M.D.La.1998, 8 F.Supp.2d 883. Removal Of Cases 107(7)

In determining whether plaintiff stated claim against resident defendant, and thus whether that defendant was fraudulently joined so as to defeat diversity jurisdiction, court uses standard similar to that for motion to dismiss; further, in those instances where court pierces pleadings and considers factual and legal materials outside pleadings, it should only consider whether these materials establish facts supporting claims, not whether these materials resolve merits of plaintiff's claims. Reeb v. Wal-Mart Stores, Inc., E.D.Mo.1995, 902 F.Supp. 185. **Federal Courts** 2450

In establishing that a defendant to the action has been fraudulently joined to defeat diversity jurisdiction, and thus defeat **removal** to **federal court**, the **removing** party must show that there has been fraud in the pleading of jurisdictional facts or that there is no possibility that the plaintiff would be able to establish a claim against the allegedly improper party in a state court proceeding. Wheeler v. Frito-Lay, Inc., S.D.Miss.1990, 743 F.Supp. 483. Removal Of Cases 107(7)

---- Meritless causes of actions, fraudulent joinder, diversity of citizenship

A finding of fraudulent joinder in diversity action is not warranted unless it is clear that there can be no recovery under state law based on the cause of action and facts alleged, or there is no reasonable basis for predicting that the plaintiff could prevail. Conn v. Whole Space Industries Co., Ltd., S.D.Ohio 2013, 940 F.Supp.2d 644. **Federal Courts** 2450

Joinder is fraudulent, and will thus not defeat diversity jurisdiction, if on face of state court complaint, no cause of action lies against resident defendant. Reeb v. Wal-Mart Stores, Inc., E.D.Mo.1995, 902 F.Supp. 185. **Federal Courts** 2450

Where employee of Memphis waste water system sued nonresident chemical corporation and city for injuries resulting from exposure to high levels of toxic chemicals discharged into water system, the nuisance claim against city stated valid cause of action under T.C.A. § 23-3301 et seq., and hence joinder of city was not for fraudulent purpose of destroying diversity jurisdiction so as to prevent nonresident corporation from having case removed from state to **federal court**. Mabray v. Velsicol Chemical Corp., W.D.Tenn.1979, 480 F.Supp. 1240. Removal Of Cases 36

---- Possible liability, fraudulent joinder, diversity of citizenship

Injured Mississippi nursing home residents had reasonable possibility of stating negligence claims against home managers, and thus such non-diverse defendants were not fraudulently joined for purpose of determining removability of case to **federal court**; under both state regulations and common law, defendants, though agents of non-resident home owner, arguably owed duty of care to residents. Gray ex rel. Rudd v. Beverly Enterprises-Mississippi, Inc., C.A.5 (Miss.) 2004, 390 F.3d 400. Removal Of Cases 36

Where it appeared uncontrovertibly from allegations of plaintiff pipeline company, exhibits attached thereto, and G.S.1937, Supp. 74-108 that plaintiff could not recover judgment against state board of social welfare of Kansas for damages for breach of gas supply contract made in name of state and not in name of welfare board, sole purpose of pipeline company joining welfare

board as party was to prevent removal of action to **federal court** and such joinder was fraudulent. Miami Pipe Line Co. v. Panhandle Eastern Pipe Line Co., C.A.10 (Kan.) 1967, 384 F.2d 21. Removal Of Cases 36

Landlord of property where child had become entangled on cord of mini-blind and strangled to death had not been fraudulently joined to parent's wrongful death action, so as to defeat diversity jurisdiction, where it was plausible under Ohio law that landlord had been responsible, in part, for the child's death under a state-law negligence theory, based on its purchase and installation of the blinds. Conn v. Whole Space Industries Co., Ltd., S.D.Ohio 2013, 940 F.Supp.2d 644. **Federal Courts** 2450

As reasonable basis existed for predicting that Iowa courts might impose individual liability for workers' compensation retaliation claims, nondiverse supervisors were not fraudulently joined as defendants in workers' compensation retaliation action brought by discharged employee, and **federal court** could consider supervisors' citizenship in determining whether diversity jurisdiction existed. Brunk v. Graybar Elec. Co., Inc., S.D.Iowa 2010, 713 F.Supp.2d 814. **Federal Courts** 2450

Estate of worker who died from injuries sustained in fall from aerial lift had no possibility of successful claim against mechanic employed by lessor of lift to worker's employer, and thus mechanic was fraudulently joined as defendant in estate's negligence and product liability action against lessor and manufacturer of lift solely for purpose of defeating diversity jurisdiction; mechanic simply performed service on lift three days before accident as he had been trained to do, could not have foreseen accident in which lift tipped forward and pitched worker to ground, had no duty to warn worker, and had no contact with worker. Linnin v. Michielsens, E.D.Va.2005, 372 F.Supp.2d 811. **Federal Courts** 2450

Estate of deceased minor that brought wrongful death action, stemming from minor's fatal golf cart accident while working at country club, fraudulently joined members of country club board to action, since no reasonable basis existed for maintaining claims against members; Massachusetts wrongful death statute yielded to provisions of workers' compensation statute precluding any civil action for wrongful death of employee subject to provisions of workers' compensation law. Carey v. Board of Governors of Kernwood Country Club, D.Mass.2004, 337 F.Supp.2d 339. **Federal Courts** 2450; Workers' Compensation 2146

No possibility existed that plaintiff who brought products liability action in state court against cigarette manufacturers could recover on claims asserted under Georgia law against retail sellers of cigarettes, whose joinder in action had defeated diversity, and thus, joinder was fraudulent and did not defeat removal of action to **federal court**; any claim regarding alleged failure to warn plaintiff was preempted by Federal Cigarette Labeling and Advertising Act, and Georgia strict liability law does not apply to retailers of consumer products. Crooke v. R.J. Reynolds Tobacco Co., N.D.Ga.1997, 978 F.Supp. 1482. Removal Of Cases 36

County did not fraudulently join in-state corporation which bought assets of out-of-state construction company as defendant in breach of contract action against construction company, as would allow out-of-state defendant to **remove** case to **federal court** despite apparent lack of complete diversity, where, under state law, there was reasonable possibility that buyer was liable for debts of seller. County of Cook v. Mellon Stuart Co., N.D.Ill.1992, 812 F.Supp. 793. Removal Of Cases 36

Federal district court should dismiss resident defendant who is fraudulently joined in case merely to defeat diversity jurisdiction; joinder is not fraudulent, however, if there is reasonable basis for asserting that state law may impose liability on resident under facts alleged. Yedla v. Electronic Data Systems, Inc., E.D.Mich.1991, 764 F.Supp. 90. Federal Civil Procedure 1749; **Federal Courts** 2450

Colorado airline's joinder of competitor's sales manager, a Colorado defendant, in antitrust and unfair competition action based on competitor's use of its computerized reservation system, did not destroy diversity of citizenship, where there was no possibility that airline could recover from sales manager on any of the claims alleged. Frontier Airlines, Inc. v. United Air Lines, Inc., D.Colo.1989, 758 F.Supp. 1399. **Federal Courts** 2450

Remand for removal of case was not precluded on theory of fraudulent joinder of Alabama defendant to defeat diversity jurisdiction of **federal court** in Alabama, where plaintiff alleged that both Alabama defendant, assertedly Virginia corporate defendant's plant manager, and defendant had committed acts of negligence, nuisance, wantonness in discharging DDT into waterways in Alabama, so that it was possible that plaintiffs would be able to establish cause of action against plant manager in state court. Charest v. Olin Corp., N.D.Ala.1982, 542 F.Supp. 771. Removal Of Cases 36

Since there was more than a reasonable basis for predicting that state law might impose some liability on individual defendant, who was of the same citizenship as plaintiff, it could not be said that joinder of such defendant was collusive and fraudulent so as to defeat diversity jurisdiction and, hence, to bar removal of case from state to **federal court** on diversity grounds. American Brahmental Ass'n v. American Simmental Ass'n, W.D.Tex.1977, 443 F.Supp. 163. Removal Of Cases 36

Natural gas buyers which were added as defendants to action instituted in state court by seller seeking to avoid having to delivery full amount of gas called for in contract and to allocate gas available were not fraudulently joined for purposes of defeating petition of one buyer which was an original defendant to **remove** case to **federal court** on basis of diversity jurisdiction and addition of the buyers precluded removal where it could not be said that there was no possibility that liability might be imposed upon the additional buyers and there was not complete diversity with the additional buyers added. Continental Oil Co. v. PPG Industries, Inc., S.D.Tex.1973, 355 F.Supp. 1183. Removal Of Cases 36

---- Affiliated companies, fraudulent joinder, diversity of citizenship

Manufacturers, distributors, and sellers of pharmaceutical drugs fenfluramine and phentermine ("fen-phen"), who had been sued in state court by Florida resident, and **removed** action to **federal court**, failed to show that joinder of Florida corporation, which defeated diversity, was fraudulent, and thus, remand was required; while affidavit was submitted stating that Florida corporation was a holding company and did not manufacture or distribute any pharmaceutical product, plaintiff obtained discovery indicating that corporation was involved in industry, no outright fraud by plaintiff was alleged, and claim against corporation was closely connected to claim against other defendants. Droessler v. Wyeth-Ayerst Laboratories, S.D.Fla.1999, 64 F.Supp.2d 1265. Removal Of Cases 36; Removal Of Cases 102; Removal Of Cases 107(7)

---- Directors and officers, fraudulent joinder, diversity of citizenship

Resident defendants in derivative action filed in state court against both resident and nonresident defendants were not strangers to a controversy which did not concern them and allegations of their breach of fiduciary duty owed the corporation were not baseless in view of record so that their joinder after prior action against nonresident defendants only was voluntarily dismissed by stockholders upon being **removed** to **federal court** was not fraudulent. Quinn v. Post, S.D.N.Y.1967, 262 F.Supp. 598. Removal Of Cases 36

---- Employees and managers, fraudulent joinder, diversity of citizenship

Georgia employees of telephone company were not fraudulently joined in action by victims of gas pipeline explosion in Venezuela in order to destroy diversity; victims could state arguable cause of action against employees, who were responsible for planning and surveying proposed site for laying fiber-optic cable, and allegedly performed their duties negligently, with result that machine used to dig trench for the cable struck pipeline. Pacheco de Perez v. AT & T Co., C.A.11 (Ga.) 1998, 139 F.3d 1368. **Federal Courts** 2450

Employee had not fraudulently joined plant manager, for purposes of defeating diversity jurisdiction, in employment discrimination suit brought against employer; suit had been brought under West Virginia Human Rights Act, which allowed for claims against persons involved in prohibited discriminatory practices as well as employers. Marshall v. Manville Sales Corp., C.A.4 (W.Va.) 1993, 6 F.3d 229. **Federal Courts** 2450

Under California law, former employee was capable of amending his complaint against former manager to allege additional facts lacking in original complaint to establish extreme and outrageous conduct to state a valid claim of intentional infliction of emotional distress (IIED), and thus manager was not sham defendant, such that remand to state court following **removal** to **federal court** was warranted for lack of diversity jurisdiction in employee's action based on discrimination and harassment. Rangel v. Bridgestone Retail Operations, LLC, C.D.Cal.2016, 200 F.Supp.3d 1024. Removal Of Cases 107(11)

Terminated flight attendant did not fraudulently join two fellow employees to suit against airline, claiming violation of New Jersey Law Against Discrimination (LAD), for purpose of destroying diversity of citizenship and blocking removal of case to **federal court**; it was possible that attendant could establish claim against employees under LAD for aiding and abetting illegal termination, especially on part of one employee alleged to have investigated claim of attendant misconduct and to have made termination decision. Mersmann v. Continental Airlines, D.N.J.2004, 335 F.Supp.2d 544, appeal after remand from **federal court** 2006 WL 507842. Removal Of Cases 36

Oil refinery's plant manager and emergency preparedness manager were fraudulently joined to prevent diversity jurisdiction over action arising from refinery explosion; plant manager could not have been liable for alleged misfeasance of responsibilities as employee, and emergency preparedness manager could not have been liable for nonfeasance of duties as employee. Lailhengue v. Mobil Oil Co., E.D.La.1991, 775 F.Supp. 908. **Federal Courts** 2450

In determining whether airline's joinder of competitor's regional sales manager in action based on competitor's operation of computerized reservation system was fraudulent attempt to avoid diversity jurisdiction, airline's allegation that competitor breached contract to place airline's flight information on competitor's reservation system and that sales manager implemented contract was insufficient to establish possibility of recovery against sales manager, where sales manager was not a party to the contract. Frontier Airlines, Inc. v. United Air Lines, Inc., D.Colo.1989, 758 F.Supp. 1399. **Federal Courts** 2472(1)

Employer which filed conflicting affidavits concerning motives and timing of decision not to rehire employee who had been laid off and the persons involved in the decision failed in burden of establishing that supervisor, who was named to that position on the day that plaintiff employee was laid off, was fraudulently joined, and thus, since the supervisor and plaintiffs were not of different citizenship, failed to establish subject matter jurisdiction of **federal court** on basis of diversity, for purposes of removal. Ball v. Martin Marietta Magnesia Specialties, Inc., W.D.Mich.1990, 130 F.R.D. 77. Removal Of Cases 107(7)

---- Principal and agent, fraudulent joinder, diversity of citizenship

Complaint in Florida state court against nonresident manufacturer and resident agent showed reasonable possibility of recognition by Florida courts as stating claim for relief against agent for misrepresentation regarding heating ability of air heating-conditioning units, and **removal** to **federal courts** was therefore not appropriate on ground of fraudulent joinder of agent as party to prevent removal. Bobby Jones Garden Apartments, Inc. v. Suleski, C.A.5 (Fla.) 1968, 391 F.2d 172. Removal Of Cases 47

Individual defendant was “fraudulently joined” as defendant for purpose of preventing federal jurisdiction, where allegations made it plain that individual was acting as agent for disclosed principal, not for himself, and facts alleged did not, under Louisiana law, support cause of action against agent of disclosed principal; therefore, fact that individual was citizen of Louisiana, as were some plaintiffs, would not defeat diversity jurisdiction and prevent removal of action. Picquet v. Amoco Production Co., M.D.La.1981, 513 F.Supp. 938. **Federal Courts** 2450

---- Insurance actions, fraudulent joinder, diversity of citizenship

Under Georgia law, plaintiffs in lawsuit seeking damages against insureds were proper parties in insureds' action against their insurers and plaintiffs seeking declaratory judgment that insurers breached their duty to defend them in that lawsuit, and thus insurers could not remove insureds' action to **federal court** on basis of diversity jurisdiction, despite insurers' claim of fraudulent joinder. Robison v. Casteel, N.D.Ga.2019, 407 F.Supp.3d 1324. Removal of Cases 36

Insureds' joinder of non-diverse agents in their action against insurance company was improper, and thus action was **removable** to **federal court**, even though fraudulent concealment claims against all defendants were subject to common limitations defense, where insureds also asserted claim that insurer engaged in continuing practice of improperly setting interest rates and charging excess administrative fees and other fees on their policies, which was not subject to limitations defense. Rainwater v. Lamar Life Ins. Co., S.D.Miss.2005, 381 F.Supp.2d 581. Removal Of Cases 36

Insured did not fraudulently join insurance adjuster in her state court action against insurer and adjuster for violation of Texas statute prohibiting deceptive trade practices in insurance business, and thus removal of action to **federal court** on basis of diversity of citizenship between insurer and insured was not warranted, despite insurer's contention that adjuster played only administrative role in matter, in light of insured's allegations that adjuster signed coverage denial letter, but failed to answer her questions adequately, disclose engineer's relationship with insurance industry, or initiate reevaluation of her home. Vargas v. State Farm Lloyds, S.D.Tex.2002, 216 F.Supp.2d 643. Removal Of Cases 36

Sellers of mobile home were fraudulently joined to defeat diversity jurisdiction in insured's action alleging fraudulent failure to disclose that mobile home insurance policy included optional coverage for adjacent structures and insured would be required to pay for it; sellers were not present when policy was sold. Sellers v. Foremost Ins. Co., M.D.Ala.1996, 924 F.Supp. 1116. **Federal Courts** 2450

Insured that alleged its insurer denied its claim in bad faith did not have claim, under Mississippi law, against claims representative who adjusted claim on insured's behalf, so that joinder of claims representative, a nondiverse defendant, was fraudulent and did not defeat removal of action to **federal court**; insured's claim related solely to insurer's failure to pay, and insured did not suggest that claims representative had any role in decision to deny claim. Ironworks Unlimited v. Purvis, S.D.Miss.1992, 798 F.Supp. 1261. Removal Of Cases 36

---- Miscellaneous cases, fraudulent joinder, diversity of citizenship

The manufacturer of a lawn mower failed to show that a buyer of one of its mowers fraudulently joined the mower's seller, which was a dealer located in Georgia, where the buyer was a resident, and thus complete diversity did not exist in the buyer's action against the manufacturer and seller for injuries he sustained when he was run over by the mower, precluding removal jurisdiction; the buyer stated a claim against the seller for breach of implied warranty of merchantability under Georgia law, and an affidavit of the seller's co-owner, stating that the buyer's counsel said he brought suit against the seller to stay out of **federal court**, did not undermine or otherwise impact the determination that the buyer made out a valid breach of warranty claim against the seller. Whitaker v. Excel Industries, S.D.Ga.2021, 2021 WL 150207. Removal of Cases 36

Lobbyist allegedly retained by law firm partnership that was among the plaintiffs' counsel in underlying class action stated a cause of action for unjust enrichment under District of Columbia law that was not wholly unreasonable, and thus, lobbyist's inclusion of the partnership as a non-diverse defendant was not fraudulent joinder to defeat diversity jurisdiction as basis for removal; lobbyist alleged that at partnership's urging, he expended time, money, and resources to "move the ball forward" on federal legislation that funded the settlement of the class action, thereby helping plaintiffs' litigation team recoup attorney fees. Boyd v. Kilpatrick Townsend & Stockton, LLP, D.D.C.2015, 79 F.Supp.3d 153, appeal after remand from **federal court** 164 A.3d 72. Implied and Constructive Contracts 3; Removal of Cases 36

Mortgagor named as defendant in breach of contract action brought by mortgagee, a federal credit union, claiming that mortgagor caused property to decrease in value after fire, failed to show that nondiverse plumbing and heating company, which was also

defendant in action, was fraudulently joined for purpose of destroying diversity of citizenship and preventing removal of action to **federal court**; case began in state court as action filed by mortgagee solely against company, seeking indemnification for any damages awarded to mortgagor in her underlying action for compensation for fire damage, mortgagor did not show that mortgagee had no possibility of any recovery, and, although mortgagor alleged that decrease in value of mortgaged property had never been recognized as supporting a cause of action for benefit of mortgagee, she provided no authority to support proposition that decrease in value of mortgaged property could not be basis for damages in action. NASA Federal Credit Union v. W. Jenkins Plumbing & Heating Co., D.D.C.2009, 607 F.Supp.2d 213. Removal Of Cases 36

Plaintiffs asserting wrongful death and products liability claims arising from their infant child's use of cold medicine failed to establish non-fanciful claim against manufacturer's sales representative, and thus representative's fraudulent joinder did not destroy diversity between parties, thereby permitting **removal** to **federal court**, where agent did not market or distribute medication at issue, and plaintiffs cited no authority for holding sales representative liable for negligence under marketing enterprise theory. Vu v. Ortho-McNeil Pharmaceutical, Inc., N.D.Cal.2009, 602 F.Supp.2d 1151. Removal Of Cases 36

Because employee stated colorable claim against nondiverse individual defendant for interference with contractual relations, employer failed to meet its burden of showing that defendant was fraudulently joined, complete diversity was lacking, **federal court** lacked subject matter jurisdiction, and case would be remanded to state court from which it had been removed. Rodrigues v. Genlyte Thomas Group LLC, D.Mass.2005, 392 F.Supp.2d 102. Removal Of Cases 36; Removal Of Cases 102

Nondiverse lessor of property on which convenience store was located was not fraudulently joined in patron's action against diverse owner of store, seeking damages for injuries patron allegedly suffered in slip and fall on ice in store's parking lot, and thus store owner could not **remove** action to **federal court**, since state court could have found that lessor was liable under exception to landlord-out-of-possession rule under Pennsylvania law. Anderson v. Philadelphia Suburban Development Corp., E.D.Pa.2004, 322 F.Supp.2d 582. Removal Of Cases 36; Removal Of Cases 102

Joinder by Alabama resident who was injured while using log splitter of claim against owner of splitter, who was Alabama resident, to state court action in which products liability claims were asserted against nonresident defendant was not fraudulent, and thus, nonresident defendant could not **remove** action to **federal court**; more than a possibility existed that plaintiff, who alleged that he was injured while using splitter at express invitation of owner, had stated viable claim against owner. Everett v. MTD Products, Inc., N.D.Ala.1996, 947 F.Supp. 441. Removal Of Cases 36

Defendant was fraudulently joined in action originally filed in state court, and thus **removal** to **federal court** based on diversity jurisdiction was proper; plaintiff failed to produce any evidence outside of complaint upon which claim against defendant could be based, while defendants produced evidence demonstrating that joined defendant was in no way involved in case. Federal Beef Processors, Inc. v. CBS Inc., D.S.D.1994, 851 F.Supp. 1430. Removal Of Cases 36

Defendants in suit by beer wholesalers alleging that defendants violated North Carolina's unfair or deceptive trade practices statute, committed common law unfair or deceptive trade practices, and violated North Carolina's Beer Franchise Act, failed to establish that the three North Carolina defendants, who sold beer in same wholesale markets as plaintiffs, were merely nominal defendants joined to prevent removal; therefore, **removal** to **federal court** was improper and remand to state court was appropriate. BJT, Inc. v. Molson Breweries USA, Inc., E.D.N.C.1994, 848 F.Supp. 54. Removal Of Cases 36; Removal Of Cases 102

That resident defendants in derivative action filed in state court had not been included in prior suit against nonresidents on same cause of action, that prior action had been voluntarily dismissed after its **removal** to **federal court**, that plaintiffs' brief stated that an action could be dismissed to prevent **removal** to **federal court** even if purpose was to defeat removal and retain state jurisdiction and that defendants strongly denied commission of or participation in tortious acts alleged did not, singly or in combination, sustain claim of fraudulent joinder of resident defendants. Quinn v. Post, S.D.N.Y.1967, 262 F.Supp. 598. Removal Of Cases 36

In determining propriety of **removal** to **federal court** of suit which was brought in New York by passenger against host driver who was resident of New York and whom passenger married subsequent to the accident, driver of other vehicle who was resident of Vermont, and physician who was resident of Vermont, fact that passenger did not have strong case against host driver because of admissions of other driver was insufficient for holding that joinder of host driver was collusive. Leinberger v. Webster, E.D.N.Y.1975, 66 F.R.D. 28. Removal Of Cases 36

Realignment of parties, diversity of citizenship--Generally

Where **removal** jurisdiction of **federal court** is invoked on basis of diversity, characterization of a party as defendant or plaintiff in state action is not determinative of his status for purposes of jurisdiction of **federal court**, and **federal court** must examine substantive interests of parties and align them in manner which is consistent with their actual interests and propriety of removal is then considered in light of parties' respective positions in the suit. First Nat. Bank of Chicago v. Mottola, N.D.Ill.1969, 302 F.Supp. 785, affirmed 465 F.2d 343. Removal Of Cases 37

In determining whether action is **removable**, **federal court** to which it has been removed may realign the parties to reflect their actual interest. Ackert v. Ausman, S.D.N.Y.1963, 217 F.Supp. 934. See, also, Hedges v. Rudeloff, D.C.Tex.1961, 196 F.Supp. 475. Removal Of Cases 37

In determining whether an action is **removable** to **federal court**, a **federal court** may realign parties to reflect their actual interest. Gratz v. Murchison, D.C.Del.1955, 130 F.Supp. 709. Removal Of Cases 37

---- Benefit to parties, realignment of parties, diversity of citizenship

Where plaintiff's controversy is with both a corporation and individual defendants, even when corporation may benefit if plaintiff prevails, corporation is not realigned as a party plaintiff and corporation cannot be considered, for jurisdictional purposes, other than a defendant. Unanue v. Caribbean Canneries, Inc., D.C.Del.1971, 323 F.Supp. 63. **Federal Courts** 2453

---- Conflict of interests, realignment of parties, diversity of citizenship

Since there was no more than a possibility of conflict between defendant and its codefendant insurer to support suggestion that codefendant insurer be realigned as plaintiff, realignment of defendant insurer with plaintiff insurer, which were residents of the same state, would not be undertaken in order to salvage jurisdiction in the **federal courts**. American Mut. Liability Ins. Co. v. Flintkote Co., S.D.N.Y.1983, 565 F.Supp. 843. **Federal Courts** 2452

---- Fraudulent joinder, realignment of parties, diversity of citizenship

Where original defendant seeks removal, court may realign parties according to their substantive interests but intervenor may obtain realignment only when it is shown that plaintiff fraudulently misjoined parties in effort to deprive **federal court** of jurisdiction. Baker v. National Boulevard Bank of Chicago, N.D.Ill.1975, 399 F.Supp. 1021. Removal Of Cases 37

Joinder of formal or unnecessary parties cannot prevent removal of action to **federal court**, and in determining whether federal jurisdiction exists, denomination given parties in pleadings is not always conclusive and federal district court is obliged to examine underlying, substantive interests of parties in dispute, and, if party's actual interest is not reflected by his alignment in pleadings, court must rearrange party on proper side of suit, whether it has effect of defeating or creating jurisdiction. First Nat. Bank of Chicago v. Mottola, N.D.Ill.1969, 302 F.Supp. 785, affirmed 465 F.2d 343. Removal Of Cases 37

---- Indispensable or necessary parties, realignment of parties, diversity of citizenship

Where plaintiff sought relief from Delaware corporation with respect to the proper registration of his stock interest in corporation, such corporation was a necessary party to action which defendants attempted to remove from Delaware court to **federal court**, and corporation could not, as suggested, be realigned as a party plaintiff on the ground that it was a mere nominal and disinterested party thereby escaping provisions of this section prohibiting removal where defendant is citizen of state in which suit is brought. Unanue v. Caribbean Canneries, Inc., D.C.Del.1971, 323 F.Supp. 63. Removal Of Cases 31; Removal Of Cases 37

Dismissal of parties, diversity of citizenship--Generally

Involuntary dismissal of nondiverse party in state court action should not lead to removal of action to **federal court** if complete diversity just created by dismissal might be destroyed by appeal and reversal of state court's decision, where, however, possibility of such appeal no longer exists, removal can be allowed. Atlanta Shipping Corp. v. International Modular Housing, Inc., S.D.N.Y.1982, 547 F.Supp. 1356. Removal Of Cases 39

---- Voluntary-involuntary rule, dismissal of parties, diversity of citizenship

Federal court could not exercise diversity jurisdiction over a case that became removable because of the involuntary dismissal of nondiverse defendant. Phillips v. BJ's Wholesale Club, Inc., E.D.Va.2008, 591 F.Supp.2d 822. Removal Of Cases 39

If, after the commencement of litigation, a plaintiff enters into a covenant not to execute with all remaining nondiverse parties, complete diversity can arise, and the case can then be **removed** to **federal court**; the key question a court must decide is whether the settlement or dismissal was a voluntary act of the plaintiff which has demonstrated the plaintiff's desire not to pursue the case against the non-diverse party. Hanahan v. John Hancock Life Ins. Co. (USA), D.S.C.2007, 518 F.Supp.2d 780. Removal Of Cases 29; Removal Of Cases 39

Nondiverse roofing maintenance company was not fraudulently joined with diverse roofing company to avoid **removal** to **federal court** of action by church alleging multiple claims, including for breach of warranty, breach of contract, and negligent construction, even though state trial court had granted summary judgment to the nondiverse maintenance company on statute of limitations grounds, and therefore voluntary-involuntary rule compelled remand; the motion for summary judgment was not granted until after substantial discovery, and the state appellate process had not been exhausted and a motion to reconsider the summary judgment was still pending. Riverdale Baptist Church v. Certainteed Corp., D.Md.2004, 349 F.Supp.2d 943. Removal Of Cases 36; Removal Of Cases 102

Motion to dismiss claims against it which was granted to defendant who defeated removal did not constitute voluntary act on part of plaintiff, and removal of action to **federal court** by remaining defendant was prohibited under "voluntary-nonvoluntary rule," notwithstanding fact that plaintiff did not oppose defendant's motion to dismiss and suggested language used by state court in order of dismissal. Machinsky v. Johnson & Johnson Medical, Inc., E.D.Mo.1994, 868 F.Supp. 269. Removal Of Cases 39

Removal of medical malpractice action to **federal court** as result of dismissal of nondiverse defendant stemming from failure of plaintiff to file physician's report or affidavit of merit as required by Illinois Medical Malpractice Statute was not proper under voluntary-involuntary rule as nondiverse defendant's existence in suit had not yet finally been determined by appellate court of Illinois. Ushman by Ushman v. Sterling Drug, Inc., C.D.Ill.1988, 681 F.Supp. 1331. Removal Of Cases 39

---- Miscellaneous cases, dismissal of parties, diversity of citizenship

Personal injury action brought in California by California resident against California citizen and corporation which was resident of Michigan and Delaware was not **removable** to **federal court** after a final judgment against California citizen removed him from proceedings, where plaintiff had neither dismissed nor discontinued case against California citizen, voluntarily or otherwise. Self v. General Motors Corp., C.A.9 (Cal.) 1978, 588 F.2d 655. Removal Of Cases 39

Action instituted in state court against a resident defendant and a nonresident defendant, nonremovable to **federal court** when commenced due to lack of diversity of citizenship, could not thereafter be removed when resident defendant was dismissed by means of a directed verdict. Weems v. Louis Dreyfus Corp., C.A.5 (Miss.) 1967, 380 F.2d 545. Removal Of Cases 39

Involuntary dismissal of nondiverse city and police officer from store patron's action for false imprisonment, false arrest, and malicious prosecution lacked sufficient finality to allow diverse store to **remove** action to **federal court**; order dismissing nondiverse parties was interlocutory, and diversity jurisdiction would have been destroyed if state appellate court reversed dismissal of nondiverse parties. Cox-Stewart v. Best Buy Stores, L.P., D.Md.2003, 295 F.Supp.2d 566. Removal Of Cases 39

State court's summary adjudication in favor of nondiverse defendant did not entitle sole remaining diverse defendant to **remove** case to **federal court**, inasmuch as complaint stated cause of action against nondiverse defendant which was pursued in good faith by plaintiffs. Katz v. Costa Armatori, S.p.A., S.D.Fla.1989, 718 F.Supp. 1508. Removal Of Cases 36

Aliens, diversity of citizenship

In absence of diverse citizenship, federal district court was without jurisdiction to entertain an action at law, which was based on the general maritime law, and which was between aliens who were not citizens of any state of the United States, as one arising under the Constitution or laws of the United States, and, therefore, there was no right of removal of such civil action from a state court to the **federal court**. Meikle v. Leeds Shipping Co., E.D.Va.1957, 152 F.Supp. 206. **Federal Courts** 2245; **Federal Courts** 2323; **Removal** Of Cases 11

Corporations, diversity of citizenship--Generally

For purposes of both diversity and removal jurisdiction, corporation is deemed to be citizen of state in which it is incorporated and of state where principal place of business is located. R.G. Barry Corp. v. Mushroom Makers, Inc., C.A.2 (N.Y.) 1979, 612 F.2d 651, 204 U.S.P.Q. 521. **Federal Courts** 2442; **Removal** Of Cases 27

For purposes of removal and diversity jurisdiction, a corporate litigant is a citizen of any state by which it is incorporated and wherein it has its principal place of business. Dodrill v. New York Cent. R. Co., S.D.Ohio 1966, 253 F.Supp. 564. **Federal Courts** 2442; **Removal** Of Cases 27

A corporation is a citizen of the state in which it is incorporated, within provisions of this section relating to removal of diversity cases to **federal court**. Toulmin v. Industrial Metal Protectives, D.C.Del.1955, 135 F.Supp. 925. Removal Of Cases 27

---- Principal place of business, corporations, diversity of citizenship

Complaint filed in Virginia state court was properly **removed** to **federal court** on basis of diversity jurisdiction where it prayed for more than $2 million, easily clearing statutory threshold of $75,000, and parties were diverse as plaintiff was citizen of Virginia and defendant was incorporated in Delaware and had its principal place of business in Pennsylvania. Van Lier v. Unisys Corp., E.D.Va.2015, 142 F.Supp.3d 477. Removal of Cases 29; Removal of Cases 74

Court will determine corporation's principle place of business for purposes of diversity jurisdiction by locating nerve center from which corporation's officers direct, control and coordinate all activities regardless of locale, in advancement of corporate

objective, where corporation is engaged in far-flung and varied activities. Hanna v. Fleetguard, Inc., N.D.Iowa 1995, 900 F.Supp. 1110. **Federal Courts** 2441

For purposes of this section governing removal of state court action to **federal court**, corporation is deemed to be citizen of state wherein it has principal place of business, and of state of its incorporation. Fine v. Delalande, Inc., S.D.N.Y.1982, 545 F.Supp. 275. Removal Of Cases 27

Question of corporation's principal place of business, for purposes of determining whether case can be removed from state to **Federal court** on the basis of diversity of citizenship, is to be determined on a case-by-case basis, taking into account factors such as the character of the corporation, its purposes, the kind of business in which it is engaged, and the situs of its operation. Northeast Nuclear Energy Co. v. General Elec. Co., D.C.Conn.1977, 435 F.Supp. 344. Removal Of Cases 27

Case cannot be removed by corporation to **federal court** in state in which corporation has its principal place of business irrespective of its incorporation in another state. Teeter v. Iowa-Illinois Gas & Elec. Co., N.D.Iowa 1964, 237 F.Supp. 961. Removal Of Cases 45

---- Doing business, corporations, diversity of citizenship

Corporation, by qualifying to do business in state and by consenting to be sued in courts of that state, did not become citizen of that state for diversity purposes nor did it waive its right to **removal** to **federal court**. Sugar Corp. of Puerto Rico v. Environeering, Inc., D.C.Puerto Rico 1981, 520 F.Supp. 996. **Federal Courts** 2439; **Removal** Of Cases 29

Jurisdiction of federal district court over corporate defendants domiciled outside New York, in action removed from New York court, was to be determined by looking to contacts which defendants had had with State of New York, and if contacts were substantial enough to require them to defend suit without violating traditional concepts of fairness and substantial justice, **federal court** had power to render judgment for or against them. Weinberg v. Colonial Williamsburg, Inc., E.D.N.Y.1963, 215 F.Supp. 633. Removal Of Cases 111

Where Illinois corporation obtained license to do business in Michigan and appointed resident agent, it did not thereby become a domestic Michigan corporation and a citizen of Michigan, and it was not deprived of its right to remove action against it by Michigan resident, to the **federal court** on ground of diversity of citizenship. Nyberg v. Montgomery Ward & Co., W.D.Mich.1954, 123 F.Supp. 599. Removal Of Cases 27

---- Dissolved corporations, diversity of citizenship

Dissolved Virginia corporation could not be ignored for purpose of determining diversity jurisdiction in action by Virginia citizen on ground that corporation had not been served with process, in that service of process could have been instituted upon trustees of corporation at any time and where corporation had not been formally dismissed as party defendant. Oliver v. American Motors Corp., E.D.Va.1985, 616 F.Supp. 714. **Federal Courts** 2439

---- Foreign corporations, diversity of citizenship

Fact that defendant was a foreign corporation subject to service of process in Virginia did not make it any less a citizen of another state and, hence, did not establish a lack of diversity required for removal of action from state to **federal court**. Baldwin v. Perdue, Inc., E.D.Va.1978, 451 F.Supp. 373. Removal Of Cases 27

---- Miscellaneous corporations, diversity of citizenship

Where some of defendants in action in Massachusetts state court were Massachusetts corporations, **removal** to **federal court** was not authorized under provision of subsec. (b) of this section covering removal in situation where none of defendants was citizen of state in which action was brought. Charles Dowd Box Co. v. Fireman's Fund Ins. Co., C.A.1 (Mass.) 1962, 303 F.2d 57. Removal Of Cases 29

Limited liability company was citizen of states of which its members were citizens, and thus member could not remove LLC's state action against him to **federal court** on basis of diversity jurisdiction. Van Beek v. Ninkov, N.D.Iowa 2003, 265 F.Supp.2d 1037. Removal Of Cases 26

One of manufacturers of contraceptive implants that was named in complaint as defendant in negligence action was resident of same state as were plaintiffs, and manufacturer was not fraudulently joined, and so **federal court** did not have jurisdiction over action to support removal on basis of diversity of citizenship. In re Norplant Contraceptive Products Liability Litigation, E.D.Tex.1995, 889 F.Supp. 271. Removal Of Cases 36

Insurer and its claims adjuster could not remove from California state court to a California **federal court** on basis of diversity jurisdiction claims against them for violation of California Insurance Code, conspiracy, and intentional negligent infliction of emotional distress; removal statute provides that if federal jurisdiction is not based on federal question, then action is removable only if none of parties in interest is citizen of state in which such action is brought, and adjuster was California corporation with its principal place of business in San Francisco. Ehrlich v. Oxford Ins. Co., N.D.Cal.1988, 700 F.Supp. 495. Removal Of Cases 29

Joint ventures, diversity of citizenship

Citizenship of joint venture for diversity jurisdiction purposes and for removal purposes was determined by citizenship of its individual members. Universal Steel & Metal Co. (1975) Ltd. v. Railco, Inc., D.C.Vt.1978, 465 F.Supp. 7. **Federal Courts** 2447; **Removal** Of Cases 26

Partnerships, diversity of citizenship

Citizenship of law firm's Illinois partners precluded diversity jurisdiction over Wisconsin partner's suit against Illinois client, even though Wisconsin statute permitted Wisconsin partner alone to sue to recover debt owed to partnership. Kubale v. DeSoto, E.D.Wis.1991, 777 F.Supp. 1452. **Federal Courts** 2447

Representatives and trustees, diversity of citizenship

Representatives, such as executors, administrators, guardians, trustees or receivers, may stand upon their own citizenship in **federal courts** irrespective of citizenship of persons whom they represent. Nunn v. Feltinton, C.A.5 (Tex.) 1961, 294 F.2d 450, certiorari denied 82 S.Ct. 829, 369 U.S. 817, 7 L.Ed.2d 784, rehearing denied 82 S.Ct. 932, 369 U.S. 857, 8 L.Ed.2d 16. Removal Of Cases 32

Action by two trustees of testamentary trust against third who was also a beneficiary thereof, and who might, under terms of trust, lose her one-half interest in the income by taking legal steps to prevent full and complete carrying out of any of the provisions of the trust, was an adversary proceeding essentially for purpose of establishing title to proceeds of trust fund, and when trustees resided in different states and requisite amount was in controversy, action was properly **removable** to **federal**

court, notwithstanding contention that suit was an in rem action concerning only the administration of a trust. In re Lummis' Estate, D.C.N.J.1954, 118 F.Supp. 436. Removal Of Cases 42

States, diversity of citizenship--Generally

A state is not considered a citizen of any state for the purposes of diversity jurisdiction; thus, there could be no diversity jurisdiction when a state is a real party in interest to a lawsuit. People of State of Ill. v. Kerr-McGee Chemical Corp., C.A.7 (Ill.) 1982, 677 F.2d 571, certiorari denied 103 S.Ct. 469, 459 U.S. 1049, 74 L.Ed.2d 618. Federal Courts 2416

An action is not removable to federal court when a state is a party thereto. West Virginia State Bar v. Bostic, S.D.W.Va.1972, 351 F.Supp. 1118. Removal Of Cases 41

Generally, state is not a citizen within meaning of diversity statute, § 1332 of this title, and such an action cannot be removed from state court to federal court on ground of diversity of citizenship. State of W.Va. v. Haynes, S.D.W.Va.1972, 348 F.Supp. 1374. Federal Courts 2416; Removal Of Cases 26

If a state is a real party in interest in a suit, there can be no removal on basis of diversity of jurisdiction, because a state cannot be a "citizen of a state" as required by § 1332 of this title and this section. Harris County v. Ideal Cement Co., S.D.Tex.1968, 290 F.Supp. 956. Federal Courts 2416; Removal Of Cases 26

If state is real party at interest in suit, there can be no removal of suit to federal court on basis of diversity jurisdiction. Helms v. Ehe, S.D.Tex.1968, 279 F.Supp. 132. Removal Of Cases 41

The test to be applied to determine whether state is real party in interest in an action so as to preclude removal to federal court on grounds of diversity of citizenship is whether state gets benefit of decree, and it is not necessary that either state's property or its treasury be directly affected in a pecuniary sense. Lee County, Ark. v. Holden, E.D.Ark.1949, 82 F.Supp. 353. Removal Of Cases 41

---- Agencies, states, diversity of citizenship

If party named in a suit actually represents state in that action and state is a real party in interest, suit cannot be removed to federal court on basis of diversity jurisdiction. Glenmede Trust Co. v. Dow Chemical Co., E.D.Pa.1974, 384 F.Supp. 423. Removal Of Cases 26

---- Puerto Rico, states, diversity of citizenship

Commonwealth of Puerto Rico is considered a state for purpose of law with regard to removal of actions from state courts to federal courts. Kane v. Republica De Cuba, D.C.Puerto Rico 1962, 211 F.Supp. 855. Removal Of Cases 9

---- Schools and universities, states, diversity of citizenship

While state university joined as plaintiff in state court action was instrumentality of Kansas and thus not a citizen of any state for diversity purposes, its presence in suit would not be ignored in determining whether case was removable to federal court on basis of diversity jurisdiction; rather, if State of Kansas was the real party in interest bringing action, then university's presence destroyed diversity jurisdiction because statute required suit between citizens of different states. Kansas State University v. Prince, D.Kan.2009, 673 F.Supp.2d 1287. Removal Of Cases 29

Admiralty and maritime actions, diversity of citizenship

Lack of complete diversity of citizenship between parents of worker killed in accident aboard drilling platform being converted to sea-based radar carrier and defense contractors engaged in conversion precluded removal of parents' state-court tort action, which fell within district court's admiralty tort jurisdiction, pursuant to saving to suitors clause of statute generally granting district courts original and exclusive jurisdiction over civil cases of admiralty or maritime jurisdiction; parents were residents and citizens of Texas, and one defense contractor was registered as Texas corporation. Roth v. Kiewit Offshore Services, Ltd., S.D.Tex.2008, 625 F.Supp.2d 376. Admiralty 2; **Federal Courts** 3870; **Removal** Of Cases 29

Diversity statute did not provide grounds for removing boat owner's in personam action against towing company and boating organization for allegedly inadequate towing and salvage services to **federal court**; towing company and owner were both citizens of same state, owner sought less than jurisdictional amount, and towing company was citizen of state where action was brought. Auerbach v. Tow Boat U.S., D.N.J.2004, 303 F.Supp.2d 538. Removal Of Cases 29; Removal Of Cases 74

Barring some statutory prohibition to contrary, if federal statutory admiralty cause of action can satisfy jurisdictional amount, it can be removed from state court to **federal court**. Giacona v. Capricorn Shipping Co., S.D.Tex.1975, 394 F.Supp. 1189. Removal Of Cases 19(5)

If maritime claim involves no federal substantive law, absent diversity, there would be no **federal court** jurisdiction for such a claim. Eastern Steel & Metal Co. v. Hartford Fire Ins. Co., D.C.Conn.1974, 376 F.Supp. 763. **Federal Courts** 2245

Where federal question is not involved and requisite amount is lacking for diversity jurisdiction, removal of civil action properly brought in state court to the civil side of the federal district court cannot be effected, even if action is one within the admiralty jurisdiction of the **federal court**. J.J. Ryan & Sons, Inc. v. Continental Ins. Co., D.C.S.C.1974, 369 F.Supp. 692. Removal Of Cases 11

In suit by seaman against tug owner for damages and maintenance, wherein owner sued barge line company, which removed the case to the **federal court**, where plaintiff claimed that his injuries were caused by negligence of owner, and plaintiff did not allege that there was diversity of citizenship between itself and owner, and owner sought to recover from the company any money which the seaman might recover from owner and merely alleged that each defendant was incorporated under the laws of the United States, suit was properly brought in the state court, and was not **removable** to the **federal court**. Marshall v. Navco, Inc., S.D.Tex.1957, 152 F.Supp. 50. Removal Of Cases 25(1)

Class actions, diversity of citizenship

In class action cases under Class Action Fairness Act (CAFA), whether a **federal court** has jurisdiction over the proposed class action is a question separate from whether class certification is appropriate; therefore, if an action was properly removed under CAFA, the subsequent denial of class certification does not divest the **federal court** of jurisdiction to continue with the action. Abraham v. American Home Mortg. Servicing, Inc., E.D.N.Y.2013, 947 F.Supp.2d 222. Removal of Cases 2

This section providing for removal of actions which could originally have been maintained in **federal court** on basis of diversity of citizenship except where any party in interest properly joined and served as defendant is a citizen of the state in which such action is brought applies to class actions. Day-Brite Lighting Division, Emerson Elec. Co. v. International Broth. of Elec. Workers, AFL-CIO, N.D.Miss.1969, 303 F.Supp. 1086. Removal Of Cases 29

Contract actions, diversity of citizenship

Even though there was diversity between plaintiff and one defendant alleged to have breached contract, such action could not be **removed** to **federal court**, where complaint also asserted claims against nondiverse defendants for inducing such breach. Mattioni, Mattioni & Mattioni, Ltd. v. Ecological Shipping Corp., E.D.Pa.1980, 484 F.Supp. 814. Removal Of Cases 29

Illinois corporation, which issued credit life and disability policy in connection with loan and which debtors joined as third-party defendants in creditor's action to recover balance of loan, was not entitled to **remove** suit to **federal court** where debtors and creditors were Colorado citizens and their dispute involved matters of state contract law. Avco Aurora Indus. Bank v. Cline, D.C.Colo.1978, 459 F.Supp. 857. Removal Of Cases 77

Where, as action sub judice now stood, only party litigants were citizens of same state, and where they were only parties to construction contract out of which rights of all others flowed, to hold that **federal court** had jurisdiction over controversy of citizens of same state under subsec. (b) of this section providing that action shall be removable only if none of parties in interest properly joined and served as defendants is citizen of same state in which such action is brought on theory that one of parties was properly joined but had not been served before petition for removal was filed would be contrary to all known and accepted rules of law on the subject. South Panola Consol. School Dist. v. O'Bryan, N.D.Miss.1977, 434 F.Supp. 750. Removal Of Cases 29

Diversity action for breach of piano dealer's franchise contract was action of which district court had original jurisdiction and action was properly removed from state court to **federal court**. Parks v. Baldwin Piano & Organ Co., D.C.Conn.1967, 262 F.Supp. 515, affirmed 386 F.2d 828. Removal Of Cases 11

Condemnation and eminent domain proceedings, diversity of citizenship

Where requisite diversity of citizenship and amount involved exists, proceedings for acquisition of private property by eminent domain under state law may be removed from state court to **federal court**, but right of removal exists only when proceedings have ripened into civil action in state court. Chicago, R.I. & P.R. Co. v. Stude, C.A.8 (Iowa) 1953, 204 F.2d 116, rehearing denied 204 F.2d 954, certiorari granted 74 S.Ct. 46, 346 U.S. 810, 98 L.Ed. 338, affirmed 74 S.Ct. 290, 346 U.S. 574, 98 L.Ed. 317, rehearing denied 74 S.Ct. 512, 347 U.S. 924, 98 L.Ed. 1078. Removal Of Cases 4

Eminent domain action originated in state court could be **removed** to **federal court** by defendant to obtain federal jurisdiction of issues involved where there was diversity of citizenship. In re Monocacy Park, City of Bethlehem, Pa., E.D.Pa.1960, 181 F.Supp. 880. Removal Of Cases 4

Domestic relations actions, diversity of citizenship

The district court had no jurisdiction to hear divorce case or to remove divorce case from state court where both parties were citizens of state. Axelson v. Summers, E.D.Mo.1973, 369 F.Supp. 75. **Federal Courts** 2034; **Removal** Of Cases 19(1)

Interpleader actions, diversity of citizenship

Amendment of action brought by former wife of lifetime annuitant, asserting claim for money had and received against annuitant's brother, as nondiverse payee, did not defeat removal based on diversity jurisdiction over annuity owner's interpleader counterclaim against former wife and payee, under interpleader rule that only required diversity between stakeholder on one hand and claimants on other; owner had diverse citizenship from former wife and payee, and supplemental jurisdiction could be exercised over equitable claim that was so related to interpleader claim as to form same case or controversy, in that both claims derived from common nucleus of operative fact. Weaver v. Metropolitan Life Insurance Company, C.A.5 (Tex.) 2019, 939 F.3d 618. **Federal Courts** 3078(1)

An interpleader action under state law cannot be **removed** to **federal court** in the absence of complete diversity, which is required in the "interpleader rule" in the federal rules of civil procedure, though the action could have been commenced in **federal court** pursuant to original jurisdiction under the federal interpleader statute, which permits minimal diversity of citizenship. County Com'rs of Worcester County, MD v. Tingle, D.Md.2008, 555 F.Supp.2d 570. Removal Of Cases 19(1)

Interpleader action brought in state court was improperly **removed** to **federal court**; there was lack of complete diversity between plaintiff and defendants and no federal question existed. Community Title Co. of St. Louis, Inc. v. Lieberman Management Co., E.D.Mo.1989, 719 F.Supp. 869. Removal Of Cases 19(1); Removal Of Cases 29

Tort actions, diversity of citizenship--Generally

Where petition for removal asserted that plaintiff in tort action was citizen of Massachusetts and corporate defendant was incorporated in and had principal place of business in Pennsylvania but did not expressly or by inference disclose citizenship of individual defendant and state court writ indicated that individual's citizenship might be same as plaintiff, pleadings did not disclose existence of original federal diversity jurisdiction, precluding removal of action from state to **federal court**. Ezekiel v. Jones Motor Co., Inc., D.C.Mass.1974, 377 F.Supp. 273. Removal Of Cases 47

---- Wrongful death, tort actions, diversity of citizenship

Where surviving mother and sons brought action for wrongful death of father and daughter against father's estate in order to recover from insurance company, where it was clear that mother and her sons had at all times been together in either North Carolina or Missouri, and where administrator of daughter's estate, who was citizen of Virginia, was appointed merely for purpose of bringing action against mother, who had qualified as administratrix of father's estate, action was not within diversity jurisdiction of district court for Western District of Virginia, nor was it removable thereto from Virginia state court. Mullins v. Seals, C.A.4 (Va.) 1977, 562 F.2d 326. **Federal Courts** 2431; **Removal** Of Cases 32

Wrongful death and survival actions arising from fatal plane crash in Ecuador could not be **removed** to **federal court** based on diversity jurisdiction, even if there were complete diversity of the parties, where one corporate defendant appeared to be a citizen of the forum state of California. Lavadenz de Estenssoro v. American Jet, S.A., C.D.Cal.1996, 944 F.Supp. 813. Removal Of Cases 45

Presumptions, diversity of citizenship

On removal of a case from the state court to a **federal court** for diversity of citizenship, the presumption is against jurisdiction in the **federal court** and the party alleging jurisdiction in the **federal court** must clearly establish it, and if the right of removal is in doubt, jurisdiction of the **federal court** should be denied. Cudney v. Midcontinent Airlines, E.D.Mo.1951, 98 F.Supp. 403. Removal Of Cases 107(7)

Burden of proof, diversity of citizenship--Generally

When a party removes its state court action to **federal court** on basis of diversity of citizenship and party seeking remand challenges jurisdictional predicate for removal, burden falls squarely on removing party to establish its right to federal forum by competent proof. R.G. Barry Corp. v. Mushroom Makers, Inc., C.A.2 (N.Y.) 1979, 612 F.2d 651, 204 U.S.P.Q. 521. Removal Of Cases 107(7)

Defendants attempting to **remove** to **federal court** on the basis of diversity jurisdiction did not meet their burden of proving that severance of diverse plaintiffs was intended as opposed to merely separate trials, and thus **federal court** was without

subject matter jurisdiction and case would be remanded to state court, where written order of state court judge was ambiguous, defendants did not obtain from judge any clarification of ruling, and where same docket number was used for separated case. Guagnini v. Prudential Securities, Inc., W.D.Tex.1994, 872 F.Supp. 361. Removal Of Cases 101.1; Removal Of Cases 107(7)

Defendants seeking removal of case from state to **federal court** met their burden of demonstrating that there existed complete diversity between plaintiff and defendants so that action was properly removed. Sugar Corp. of Puerto Rico v. Environeering, Inc., D.C.Puerto Rico 1981, 520 F.Supp. 996. Removal Of Cases 107(7)

Massachusetts real estate trust, which removed action from state to **federal court**, had burden of establishing existence of diversity jurisdiction. Lincoln Associates, Inc. v. Great Am. Mortg. Investors, N.D.Tex.1976, 415 F.Supp. 351. Removal Of Cases 107(7)

---- Citizenship, burden of proof, diversity of citizenship

Burden of proving corporation's principal place of business for purposes of diversity of citizenship is on removing party. Zimmerman Metals, Inc. v. United Engineers & Constructors, Inc., Stearns-Roger Div., D.Colo.1989, 720 F.Supp. 859. **Federal Courts** 2477

---- Fraudulent joinder, burden of proof, diversity of citizenship

In action originally brought in Pennsylvania state court against multiple defendants by representatives of two people killed in an aviation accident, alleging state law claims of strict liability, negligence, and breaches of express and implied warranties, defendants failed to carry their heavy burden of showing that plaintiffs fraudulently joined defendants who were Pennsylvania citizens, as required for defendants to be entitled to remove the action to **federal court** despite the **removal** statute's forum defendant rule; defendants failed to show that plaintiffs' negligent design claim against the Pennsylvania defendants was not viable under Pennsylvania law, or that no reasonable basis in fact or colorable ground supported the claim against the Pennsylvania defendants. Yellen v. Teledne Continental Motors, Inc., E.D.Pa.2011, 832 F.Supp.2d 490. Removal of Cases 36; Removal of Cases 45; Removal of Cases 107(7)

Defendants seeking **removal** pursuant to **federal court's** diversity jurisdiction has burden of proving that nondiverse defendants were fraudulently joined, i.e., either that there is no possibility that plaintiff would be able to establish cause of action against nondiverse defendants in state court or that there has been outright fraud in plaintiff's pleading of jurisdictional facts. Lane v. Champion Intern. Corp., S.D.Ala.1993, 827 F.Supp. 701. Removal Of Cases 107(7)

Review, diversity of citizenship

Where both plaintiff-counterdefendant and additional counterdefendant in Texas action seeking money damages were New York corporations and defendant-counterclaimant was a Texas citizen and requisite jurisdictional amount was met, action could originally have been maintained as diversity action in federal district court; thus, validity of removal of action by the United States, which along with others had been “interpleaded” by defendant for purpose of determining priority of judgment liens, could not be raised for first time on appeal. Grubbs v. General Elec. Credit Corp., U.S.Tex.1972, 92 S.Ct. 1344, 405 U.S. 699, 31 L.Ed.2d 612. **Federal Courts** 3181; **Removal** Of Cases 11

AMOUNT IN CONTROVERSY

Amount in controversy generally

In determining whether amount in controversy requirement for diversity jurisdiction has been satisfied, courts are to place value upon economic benefit plaintiff is trying to protect, rather than economic cost defendant stands to incur as result of having to comply with a judgment favorable to plaintiff. Buckeye Recyclers v. CHEP USA, S.D.Ohio 2002, 228 F.Supp.2d 818. **Federal Courts** 2509

A **federal court** has no jurisdiction in a diversity of citizenship case for an amount in controversy less than $10,000 [now $75,000] which is removed from a state court subsequent to July 25, 1958. Lorraine Motors, Inc. v. Aetna Cas. & Sur. Co., E.D.N.Y.1958, 166 F.Supp. 319. Removal Of Cases 72

Time of determination, amount in controversy

The time to ascertain if the requisite amount necessary to invoke **federal court** jurisdiction is present is the time the petition for removal is filed. Nickel v. Jackson, W.D.Okla.1974, 380 F.Supp. 1389. Removal Of Cases 74

Certainty in valuation, amount in controversy

Value of claims against tire manufacturer under Alabama's Wrongful Death Act, as pled by estate of passenger, who was killed when tire on vehicle blew out, more likely than not exceeded $75,000, as required to remove state court action to **federal court**, although complaint did not explicitly state amount of damages sought; estate alleged that manufacturer irreparably destroyed something that possessed value beyond measure, a human life, nothing in complaint suggested that punishing manufacturer for injury caused would be unjust or inappropriate, estate alleged that manufacturer caused death through wantonness, and suggested that manufacturer might have prevented death if it were exercising ordinary care and concern for others, and that it did not even attempt to take such measures, estate implied that general public had substantial interest in deterring conduct, and alleged that manufacturer sold defective tires nationwide, thereby endangering lives of thousands of people. Roe v. Michelin North America, Inc., C.A.11 (Ala.) 2010, 613 F.3d 1058. Removal Of Cases 75

Suit in **federal court** against diverse party for damages exceeding $50,000 will not be dismissed unless it appears to legal certainty that plaintiff's claim is actually for less than the jurisdictional amount. Burns v. Windsor Ins. Co., C.A.11 (Ala.) 1994, 31 F.3d 1092. **Federal Courts** 2525

Defendant seeking to remove to federal district court in proper diversity case may not be denied access to **federal court** merely because complaint is couched in nebulous mathematical phraseology, but in such case, defendant must make affirmative showing of all requisite factors of diversity jurisdiction, including amount in controversy, at time removal is attempted. Gaitor v. Peninsular & Occidental S. S. Co., C.A.5 (Fla.) 1961, 287 F.2d 252. Removal Of Cases 47; Removal Of Cases 75

Under either the legal certainty standard or the more lenient preponderance of the evidence standard, Wisconsin truck driver and Illinois corporation that owned truck failed to demonstrate that it was more likely than not that New Jersey motorist's claims exceeded jurisdictional amount-in-controversy requirement for invoking **federal court** jurisdiction over **removed** case; even though motorist alleged "great pain and suffering," her medical bills from the accident amounted to $1,517.74, she never attempted to quantify her future medical expenses, and she did not seek any damages resulting from any lost wages as a result of injury. Buchanan v. Lott, D.N.J.2003, 255 F.Supp.2d 326. Removal Of Cases 107(7)

Uncertainty of damages is not sufficient to establish that the amount in controversy either in an action originally commenced in **federal court** or one **removed** thereto is not in excess of required jurisdictional amount; where the injury is quite clearly financial in nature, the difficulty of determining damages with exactitude does not foreclose inquiry into the question of whether or not the amount in controversy exceeds the jurisdictional minimum. Miller-Bradford & Risberg, Inc. v. FMC Corp., E.D.Wis.1976, 414 F.Supp. 1147. **Federal Courts** 2509; **Removal** Of Cases 74

Recovery permitted by law, amount in controversy

As respects removal from state to **federal court**, requisite amount was in controversy for federal jurisdiction, where complaint contained ad damnum clause for $75,000, although recovery might be limited to face amount of liability insurance policy which had been attached by plaintiffs. Ladson v. Kibble, S.D.N.Y.1969, 307 F.Supp. 11. Removal Of Cases 75

Pleadings, amount in controversy--Generally

Status of case as disclosed by plaintiff's state court praecipes controlled in determining whether the case which was **removed** to **federal court** satisfied the $10,000 jurisdictional requirement, and the filing of complaints reducing the amount claimed after removal could not oust the district court of jurisdiction. Albright v. R.J. Reynolds Tobacco Co., C.A.3 (Pa.) 1976, 531 F.2d 132, certiorari denied 96 S.Ct. 2229, 426 U.S. 907, 48 L.Ed.2d 832. Removal Of Cases 75; Removal Of Cases 76

In determining whether case can be **removed** to **federal court** on basis of diversity jurisdiction, state court petition is usually consulted to determine amount in controversy, and sum claimed by plaintiff controls if claim is apparently made in good faith. Ray Mart, Inc. v. Stock Building Supply of Texas, LP, E.D.Tex.2006, 435 F.Supp.2d 578. Removal Of Cases 75

In an action to recover unliquidated tort damages jurisdictional amount is generally determined by reference to amount claimed by plaintiff when suit was filed or at time of **removal** to **federal court**, and fact that plaintiff may ultimately recover less than the federal jurisdictional amount does not defeat federal jurisdiction. Hayes Bros. Flooring Co. v. Kenworth Motor Truck Co., E.D.Ark.1973, 355 F.Supp. 1099. Removal Of Cases 74

Propriety of removal from state to **federal court** depends upon what is claimed by plaintiffs in complaint in state court; and if it appears therefrom that there was requisite amount of more than $3,000 in controversy when removal was made, the removal when made is effective and case should not be remanded on account of matters subsequently appearing in **federal court**. Possidenti v. Mechanics & Traders Ins. Co., D.C.Md.1955, 136 F.Supp. 544. Removal Of Cases 74

---- Local rules, pleadings, amount in controversy

Louisiana statute generally prohibiting pleading of specific dollar-amount of damages, but making exception where necessary to establish lack of **federal-court** jurisdiction, did not preclude Louisiana state-court personal injury plaintiffs from recovering amount above federal diversity jurisdictional minimum, even after they pled amount below that threshold, and thus did not establish with legal certainty inability to recover above-jurisdictional amount and did not preclude removal on diversity basis. In re 1994 Exxon Chemical Fire, C.A.5 (La.) 2009, 558 F.3d 378. Removal Of Cases 75; Removal Of Cases 107(7)

---- Power of court, pleadings, amount in controversy

While a federal district court may look behind a mere allegation of jurisdictional amount in a complaint to determine from the averments thereof whether plaintiff could possibly recover the jurisdictional amount or more, court cannot increase the amount prayed for in the complaint to provide the jurisdictional amount. Stuart v. Creel, S.D.N.Y.1950, 90 F.Supp. 392. **Federal Courts** 2531(1)

---- Amendment after removal, pleadings, amount in controversy

Defendant was entitled to **remove** action to **federal court** and seek appropriate attorneys' fees and sanctions, if warranted, if plaintiffs later amended their complaint to seek damages in excess of diversity jurisdiction amount of $75,000 after claiming

that their damages did not exceed that amount. Ratliff v. Merck & Co., Inc., E.D.Ky.2005, 359 F.Supp.2d 571, on remand 2010 WL 8742555. Removal Of Cases 75

Tort action for $25,000 brought in state court and **removed** to **federal** **court** by defendant could not be removed on plaintiffs' petition to the state court following motion filed in state court to reduce claim to $9,000, in absence of showing that motion to reduce had been allowed by state court prior to filing of plaintiffs' motion to remand. Corcoran v. Pan Am. World Airways, Inc., D.C.Mass.1961, 194 F.Supp. 840. Removal Of Cases 76

---- Miscellaneous actions, pleadings, amount in controversy

Aviation consultant failed to demonstrate by preponderance of evidence that amount of controversy requirement of $75,000 was met for purpose of **removing** to **federal** **court** on basis of diversity jurisdiction airplane mechanic's action alleging violations of West Virginia Wage Payment and Collection Act (WVWPCA), breach of promise, fraudulent inducement, and breach of contract; as mechanic did not explicitly value his claim, most concrete baseline amount sought was $43,000 amount of prior settlement offer rejected by mechanic, and district court could not rely on consultant's mere allegations and speculation that mechanic sought $32,000 in punitive damages, that another plaintiff could be added to lawsuit and add to amount in controversy, or that mechanic sought treble damages. Trammell v. Sylvanus Group, LLC, S.D.W.Va.2020, 2020 WL 1169969. Removal of Cases 107(11)

Defendant being sued in state court on five counts of alleged libel failed to show reasonable probability that amount in controversy exceeded $75,000, as required to **remove** case to **federal** **court** on diversity jurisdiction grounds; complaint contained no ad damnum clause specifying amount of damages sought for each count, first numbered paragraph of complaint stated that damages were likely to exceed $25,000, and although each of the five counts began with phrase "Plaintiff repeats and realleges all prior paragraphs of the Complaint as if set forth fully herein," that language could not reasonably be interpreted as an intention to multiply the jurisdictional figure for each count. Laughlin Kennel Company v. Gatehouse Media Inc., D.Mass.2016, 202 F.Supp.3d 178. Removal of Cases 75; Removal of Cases 107(7)

Removal petitions, amount in controversy

Absent challenge by plaintiffs, **federal** **court** has right to accept allegations in petition for removal that amount in controversy exceeded jurisdictional amount. Craig v. Champlin Petroleum Co., W.D.Okla.1969, 300 F.Supp. 119, affirmed 421 F.2d 236. Removal Of Cases 75

Amount necessary for removal of case from state court to **federal** **court** is that amount which is claimed by plaintiff in his complaint and not that which is alleged in defendant's petition for removal. Bonnell v. Seaboard Air Line R. Co., N.D.Fla.1962, 202 F.Supp. 53. Removal Of Cases 75

Aggregation of claims, amount in controversy--Generally

Spouse's consortium claim and accident victim's injury claim were not "common and undivided," as required before they could be aggregated to satisfy amount in controversy requirement; under Missouri law consortium claim was considered separate, distinct and personal legal claim, derivative of victim's claim only in sense that there must be injury to spouse before claim could arise. Rodery v. Hardee's Food Systems, Inc., E.D.Mo.1998, 995 F.Supp. 999. **Federal** **Courts** 2523(3)

Where action involved single plaintiff and single defendant, plaintiff could join as many claims as she had against defendant in one action, and could aggregate amounts claimed; thus, plaintiff's aggregation of claim under two insurance policies plus additional medical expenses was sufficient to meet jurisdictional amount, and motion to remand on ground that aggregation

was improper would be denied. Adams v. State Farm Mut. Auto. Ins. Co., N.D.Miss.1970, 313 F.Supp. 1349. **Federal Courts** 2523(4); **Removal** Of Cases 74

---- Class actions, aggregation of claims, amount in controversy

In employee's putative class action alleging violations of California wage and hour statutes, employer showed by preponderance of the evidence that amount in controversy exceeded $5,000,000 jurisdictional minimum under Class Action Fairness Act (CAFA), as required for removal to be appropriate; declaration from employer's human resources consultant set out number of affected employees, their average hourly and overtime wages, and amount of workweeks, employer selected conservative violation rate of 60% for employee's meal period claim and 30% for employee's rest period claim, and even if class size was reduced 25% from employer's estimate due to overlap with prior class settlement, amount in controversy would still greatly exceed the jurisdictional minimum. Bryant v. NCR Corporation, S.D.Cal.2018, 284 F.Supp.3d 1147. **Federal Courts** 2425

In general, where plaintiffs in class action have separate and distinct claims, each claim must satisfy jurisdictional amount requirement for diversity jurisdiction. Moriconi v. AT & T Wireless PCS, LLC, E.D.Ark.2003, 280 F.Supp.2d 867. **Federal Courts** 2523(2)

Claims for disgorgement asserted by class members against wireless telecommunications provider arising from alleged price and service misrepresentations could not be aggregated in order to satisfy amount-in-controversy requirement for exercise of diversity jurisdiction; class members held no joint title to any portion of provider's profits prior to commencement of action, but rather sought to vindicate individual rights based on separate purchases of wireless services, and thus disgorgement of those amounts did not constitute restitution of common fund. Moriconi v. AT & T Wireless PCS, LLC, E.D.Ark.2003, 280 F.Supp.2d 867. **Federal Courts** 2523(2)

Joint claims for punitive damages of plaintiffs in class action against corporation for harm from release of noxious fumes would likely exceed $50,000 amount required for **federal court** to have diversity jurisdiction over action, such that removal of action was warranted, where putative class included large number of claimants, defendant was large multi-national corporation, and claim for punitive damages was based on contention that harm to claimants from release of noxious fumes was caused by wanton and reckless conduct by defendant. Duhon v. Conoco, Inc., W.D.La.1996, 937 F.Supp. 1216. Removal Of Cases 74

Under the "either viewpoint rule," the amount-in-controversy requirement for diversity jurisdiction in cases involving equitable relief is satisfied if either the gain to the plaintiff or the cost to the defendant is greater than $75,000. Chandler v. Cheesecake Factory Restaurants, Inc., M.D.N.C.2006, 239 F.R.D. 432. **Federal Courts** 2530

Class action was not **removable** to **federal court** on basis of diversity jurisdiction where amended complaint alleged that purported class plaintiff suffered damages of less than $6,200 and there was nothing in complaint to indicate that any of the purported class members had claims exceeding $75,000. Chandler v. Cheesecake Factory Restaurants, Inc., M.D.N.C.2006, 239 F.R.D. 432. Removal Of Cases 75

Counterclaims and crossclaims, amount in controversy

In determining whether case is **removable**, **federal courts** look to plaintiff's complaint to determine amount in controversy; no part of required jurisdictional amount may be met by considering defendant's counterclaim, whether permissive or compulsory. Oliver v. Haas, D.Puerto Rico 1991, 777 F.Supp. 1040. Removal Of Cases 75

A counterclaim, either permissive or compulsory, should not be considered in determining the jurisdictional amount for removal of diversity actions to **federal court**. Cabe v. Pennwalt Corp., W.D.N.C.1974, 372 F.Supp. 780. Removal Of Cases 75

Under this section a nonresident plaintiff of Missouri which had availed itself of the jurisdiction of Missouri court, could not thereafter remove such case to the **federal court** upon the filing by defendant of a counterclaim involving an amount of more than the jurisdictional amount. Lee Foods Division, Consol. Grocers Corp. v. Bucy, W.D.Mo.1952, 105 F.Supp. 402. Removal Of Cases 56

Removability of a case from a state to a **federal court** is determined by the claim of the plaintiff as shown by the record at time of filing the petition for removal, and the amount sought in a counterclaim cannot be added to plaintiff's prayer in order to supply the necessary jurisdiction. Stuart v. Creel, S.D.N.Y.1950, 90 F.Supp. 392. Removal Of Cases 75

Presumptions, amount in controversy

When a case has been **removed** to **federal court** by the defendant, there is a strong presumption that the plaintiff has not claimed a large amount in order to confer diversity jurisdiction on a **federal court** or that the parties have colluded to that end. Scaralto v. Ferrell, S.D.W.Va.2011, 826 F.Supp.2d 960. Removal Of Cases 107(7)

When suit is instituted in state court and then **removed** to **federal court**, there is strong presumption that plaintiff has not claimed a large amount in order to confer jurisdiction on **federal court**, and, under such circumstances, status of case as disclosed by plaintiff's complaint is controlling in case of removal. Duarte v. Donnelley, D.C.Hawai'i 1967, 266 F.Supp. 380. Removal Of Cases 75

Burden of proof, amount in controversy

Mortgagee failed to adequately show that amount in controversy in mortgagors' Rhode Island state court action against it to rescind foreclosure sale exceeded $75,000 as required for mortgagee to **remove** action to **federal court** on basis of diversity jurisdiction, where mortgagee provided no evidence of value of equitable title to mortgaged property at time mortgagors filed complaint; under Rhode Island law, equitable title was object of litigation, as mortgagors sought only rescission of foreclosure sale. Hernandez v. US Bank, N.A., D.R.I.2018, 318 F.Supp.3d 558. **Federal Courts** 2015; **Federal Courts** 2081

Defendant failed to prove, by a preponderance of the evidence, that the matter in controversy in cow owner's removed action to recover damages for breach of contract and for conversion arising out of the sale of cow's embryos exceeded the sum or value of $75,000, as required for federal diversity jurisdiction, where owner's complaint did not state any specific amount of damages he was seeking, and there was no stipulation regarding the value of the claim at the time of removal. Salton v. Polyock, N.D.Iowa 2011, 764 F.Supp.2d 1033. **Federal Courts** 2531(2)

If a plaintiff does not desire to try his case in **federal court** on the basis of diversity jurisdiction he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove. Holmes v. Citifinancial Mortg. Co., Inc., N.D.Miss.2006, 436 F.Supp.2d 829. Removal Of Cases 74

Plaintiff whose case was **removed** to **federal court** based on diversity jurisdiction placed in dispute whether jurisdictional amount in controversy requirement of $50,000 was satisfied, thus shifting burden to defendant to offer competent proof that requirement was satisfied at time of removal, where plaintiff failed within 30 days after removal to amend complaint to comply with jurisdictional amount requirement. King v. Wal-Mart Stores, Inc., S.D.Ind.1996, 940 F.Supp. 213. Removal Of Cases 107(7)

When jurisdictional amount is challenged, party invoking jurisdiction of **federal court** has burden of proving that it does not appear to a legal certainty that claim is actually for less than requisite jurisdictional amount. Hale v. Billups of Gonzales, Inc., M.D.La.1985, 610 F.Supp. 162. **Federal Courts** 2532(2)

Party who seeks to remove action from state to **federal** **court** on the basis of diversity jurisdiction must establish diversity of citizenship together with the requisite jurisdictional amount. Rosenberg v. GWV Travel, Inc., S.D.N.Y.1979, 480 F.Supp. 95. Removal Of Cases 107(7)

Stipulations, amount in controversy

Stipulation filed by personal injury plaintiff one month after case was **removed** to **federal** **court**, that she would not seek damages in excess of $50,000, did not defeat diversity jurisdiction, though state law did not permit her to specifically plead damages; plaintiff had made settlement offer of $120,000 in prior action involving identical complaint, she had refused defendant's request in that action to admit that she would not seek more than $50,000 in damages, and in both actions she alleged a laundry list of serious and disabling injuries that would result in present and future damages. Chase v. Shop 'N Save Warehouse Foods, Inc., C.A.7 (Ill.) 1997, 110 F.3d 424. Removal Of Cases 76

Attorney fees, amount in controversy

Law firm's claim against attorney in connection with fee dispute satisfied amount in controversy requirement for diversity jurisdiction at time of removal, even though firm only sought approximately $62,000, and eliminated its claim for treble damages after removal, where firm asserted claim for treble damages under Massachusetts Consumer Protection Act in its original complaint. Law Office of Joseph J. Cariglia, P.C. v. Jelly, D.Mass.2015, 146 F.Supp.3d 251, appeal dismissed. **Federal** **Courts** 2721

Former employee's request for 25% of indemnity sought in his wrongful termination suit to pay for his attorney fees pursuant to Puerto Rico Unjust Discharge Act was made in good faith, and thus employer could not **remove** action to **federal** **court** on basis of diversity jurisdiction, despite employer's contention that, given case's complexity, there was reasonable probability that there could be award of attorney fees in excess of 25%, where amount sought was greater than 15% minimum court was required to initially consider in awarding fees under Act, and corresponded to what Puerto Rico Supreme Court suggested in such cases, and total amount sought by employee in his complaint was less than jurisdictional amount. Zayas-Carmona v. Rent-A-Center East, Inc., D.Puerto Rico 2014, 59 F.Supp.3d 313. Removal of Cases 74

Attorney's fees could be included for purposes of determining whether the jurisdictional amount in controversy requirement was satisfied, such that diversity jurisdiction existed as required for removal, despite claim that the credit agreement at issue defined attorney's fees as "costs," such that they could not be included in the jurisdictional amount, which was "exclusive of interest and costs"; the agreement transformed attorney's fees from mere expenses associated with collecting an amount past due into a liability enforceable by the court and a substantive right to which the plaintiff was entitled. CPFilms, Inc. v. Best Window Tinting, Inc., W.D.Va.2006, 466 F.Supp.2d 711. **Federal** **Courts** 2511

Attorney fees which plaintiffs sought to recover under common fund doctrine, as percentage of recovery for each individual class member, in proposed nationwide consumer class action brought in state court, would not be in addition to damages awarded to all class members, so that possibility of recovering such attorney fees does not demonstrate that jurisdictional minimum had been met, allowing removal of action to **federal** **court**. Seroyer v. Pfizer, Inc., M.D.Ala.1997, 991 F.Supp. 1308. Removal Of Cases 74

Condemnation and eminent domain actions, amount in controversy

Even if value to plaintiff condemnees of object in litigation was less than **federal** **court's** jurisdictional minimum amount, where cost of removal of condemnor's pipeline as sought by plaintiffs would exceed the jurisdictional amount, removal of case from state to **federal** **court** by condemnor was proper and district court had jurisdiction to hear case. McCarty v. Amoco Pipeline Co., C.A.7 (Ind.) 1979, 595 F.2d 389. Removal Of Cases 74

Defendants demonstrated that it was more likely than not that the amount in controversy exceeded $75,000, warranting **removal** to **federal court** based on diversity jurisdiction, in negligence action, although plaintiff stated in his amended complaint that he was seeking no more than $74,500 in damages, where plaintiff failed to file binding stipulation that he would not accept more than $75,000 in damages, and plaintiff failed to admit in response to request for admissions that plaintiff would not amend his complaint to later seek more than $75,000 in damages. Holmes v. Citifinancial Mortg. Co., Inc., N.D.Miss.2006, 436 F.Supp.2d 829. Removal Of Cases 75

---- Declaratory judgments, equitable actions, amount in controversy

As a single defendant and noncitizen of Wisconsin, defendant was entitled to remove lawsuit against it from state to **federal court** where **federal court** could have entertained case in first place since amount in controversy exceeded $10,000 [now jurisdictional amount is $75,000]. Jadair, Inc. v. Walt Keeler Co., Inc., C.A.7 (Wis.) 1982, 679 F.2d 131, certiorari denied 103 S.Ct. 258, 459 U.S. 944, 74 L.Ed.2d 201. Removal Of Cases 26

The test for determining whether the $10,000 diversity jurisdictional amount existed in action by city against nonresident trustees of railroad for judgment declaring meaning and effect of contract between city and trustees was the value of the contract or property rights in dispute, not whether city was seeking pecuniary judgment. City of New York v. Smith, S.D.N.Y.1968, 279 F.Supp. 866. **Federal Courts** 2515

---- Injunctions, equitable actions, amount in controversy

Injunctive relief sought by putative customer class was not merely "ancillary" to its claim for monetary damages so as to preclude consideration of cost of injunctive relief for purposes of determining whether jurisdictional amount-in-controversy requirement was satisfied for removal of action from state court to **federal court** under diversity jurisdiction statute, in customer's class action against long-distance telephone company, alleging company marketed fixed per-minute rate calling programs without disclosing that all calls were subject to surcharge, asserting, inter alia, violations of Illinois Uniform Deceptive Trade Practices Act, and requesting damages and permanent injunctions, as class' prayer for relief clearly demanded permanent injunctions against further misrepresentation and full disclosure of surcharge. Stein v. Sprint Communications Co., L.P., N.D.Ill.1997, 968 F.Supp. 371. Removal Of Cases 74

Value to the defendant of having an injunction denied cannot be used to establish the jurisdictional amount necessary to sustain removal of an action from state to **federal court**. Miller-Bradford & Risberg, Inc. v. FMC Corp., E.D.Wis.1976, 414 F.Supp. 1147. Removal Of Cases 73

Insurance actions, amount in controversy

Amount in controversy for diversity jurisdiction purposes was exactly $75,000 in action seeking declaration that automobile insurance policy provided uninsured/underinsured (UM/UIM) coverage up to $100,000 per accident, rather than $25,000 per accident maximum as stated on policy's face, and thus **federal court** lacked jurisdiction over action by measure of one penny, since amount of UM/UIM provided by policy on its face was not in dispute. Freeland v. Liberty Mut. Fire Ins. Co., C.A.6 (Ohio) 2011, 632 F.3d 250. **Federal Courts** 2517

Motorist established by preponderance of evidence that amount in controversy in passenger's negligence action against motorist, in Mississippi court, seeking to recover damages arising from bodily injury, physical pain, and emotional distress allegedly incurred in motor vehicle accident, exceeded $75,000 at time of removal, and thus action was removable; passenger requested unspecified punitive damages and Mississippi juries routinely awarded damages for pain and suffering or emotional damages in excess of $75,000. Swanson v. Hempstead, N.D.Miss.2017, 267 F.Supp.3d 736. **Federal Courts** 2531(1)

In action **removed** to **federal** **court**, motorist's breach of contract claim against automobile insurer for other driver involved in collision, for failure to make full and timely medical and disability payments for motorist's injuries, did not independently satisfy the amount-in-controversy requirement for diversity jurisdiction, and thus remand to state court was required, where motorist had already received insurer's payment of $83,333.05, and value of claim was limited to $10,183 that insurer had allegedly failed to pay. Jackson v. St. Jude Medical Neuromodulation Div., M.D.Fla.2014, 62 F.Supp.3d 1343. Removal of Cases 74; Removal of Cases 102

Pension and retirement actions, amount in controversy

State court action against nonresident trustees of union welfare and retirement fund located outside state could not be **removed** to **federal** **court** on theory that placement of plaintiff's name on fund's pension rolls would result in sufficient future payments to bring amount in controversy up to the required $10,000 jurisdictional amount [now jurisdictional amount is $75,000], where trustees had been served outside state and where state court had not therefore acquired in personam jurisdiction to grant relief sought, even though plaintiff had attached $9,500 of funds within state owed to trust fund. George v. Lewis, D.C.Colo.1962, 204 F.Supp. 380. Removal Of Cases 10; Removal Of Cases 73

Tort actions, amount in controversy--Generally

It was not facially apparent from petition filed by driver in state-court personal-injury action that amount-in-controversy requirement for diversity jurisdiction was satisfied, as required to support action's **removal** to **federal** **court**, even though driver alleged he suffered "severe injuries" in accident and sought damages for pain and suffering, medical expenses, lost wages, and loss of enjoyment of life, where driver vaguely alleged injuries to his "neck, back, and both shoulders," did not allege having suffered nerve damage or herniated discs or that he underwent surgery for any injuries, did not identify his medical expenses or what treatment he had received or was receiving, and did not seek a jury trial, which was available under state law if damages exceeded $50,000. Dykes v. Lyft, Inc., M.D.La.2021, 2021 WL 4190641. Removal of Cases 75

Defendant motorcycle helmet manufacturer that sought to remove products liability action to **federal** **court** met its burden of showing that amount in controversy would be at least $50,000; although no dollar amount of damages was pled, exemplary damages were sought, and, because permanent injuries were involved, compensatory damages alone might subject defendant to possible exposure well beyond jurisdictional minimum. Cross v. Bell Helmets, USA, E.D.Tex.1996, 927 F.Supp. 209. Removal Of Cases 74; Removal Of Cases 75; Removal Of Cases 107(7)

Federal **court** lacked diversity jurisdiction in personal injury case brought by husband and wife where wife's linked loss of consortium claim was for less than requisite amount in controversy, even though husband's claims sought damages in excess of requisite amount in controversy. Tokarz v. Texaco Pipeline Inc., N.D.Ill.1994, 860 F.Supp. 563. **Federal** **Courts** 2522

Where plaintiff sought $10,000 for property damages and additional $10,000 for injuries to her person, claim exceeded $10,000 [now jurisdictional amount is $75,000] in addition to interest and costs and was properly **removed** to **federal** **court**. Wagner v. Burlington Industries, Inc., E.D.Tenn.1968, 288 F.Supp. 176. Removal Of Cases 74

Miscellaneous actions, amount in controversy

Defendants in anti-foreclosure action in which plaintiff sought injunctive relief sufficiently demonstrated that amount in controversy exceeded $75,000, as supported removal of action to **federal** **court** based on diversity jurisdiction; original principal balance on mortgage loan was $164,500, while unpaid principal currently totaled $178,204, and to extent that defendants' recovery of that balance was limited to current market value of property, county assessor's office had assessed property's value

for current year at $121,300, and at $143,800 for following year. Vawter v. Bank of America NA, D.Ariz.2015, 108 F.Supp.3d 719. Removal of Cases 74

Pawn shop failed to establish that borrowers' state law claims against it for charging excess interest on payday loans were each likely to meet amount-in-controversy requirement for diversity jurisdiction, and thus borrowers' class action was not **removable** to **federal court**, even though borrowers sought punitive damages and injunctive relief, where each borrower's claim was separate and distinct, loans and finance charges in question involved no more than several hundred dollars each, and punitive damages award or cost of complying with injunction would have to be divided pro rata among class members. Flowers v. EZPawn Oklahoma, Inc., N.D.Okla.2004, 307 F.Supp.2d 1191. Removal Of Cases 74

Wrongful discharge claim, removed by employer from Wisconsin state court to **federal court** on basis of diversity of citizenship, satisfied minimum amount in controversy requirement for diversity jurisdiction even though complaint was indeterminate as to amount of damages sought; employee alleged she incurred lost wages, benefits, advancement opportunities, and emotional distress, did not oppose removal, and submitted no indication she believed her claim was worth less than $75,000. Peddie v. Sterling Jewelers, Inc., E.D.Wis.2003, 282 F.Supp.2d 947. Removal Of Cases 75; Removal Of Cases 107(7)

Cellular telephone company, that had **removed** action to **federal court**, failed to meet its burden to demonstrate that customers met amount-in-controversy requirement for district court to have federal diversity jurisdiction over customers' class action against company, arising from company's alleged failure to disclose certain billing practices to its customers, and alleging New Jersey Consumer Fraud Act claim and other state law claims, despite contention that at least one member of plaintiff class had claim exceeding $50,000, where company failed to address claims of named plaintiffs, and had not presented estimation of named plaintiffs' damages. DeCastro v. AWACS, Inc., D.N.J.1996, 935 F.Supp. 541, appeal dismissed 940 F.Supp. 692. Removal Of Cases 107(7)

SEPARATE AND INDEPENDENT CLAIMS

Construction, separate and independent claims--Generally

Language "separate and independent" as used in subsec. (c) this section relating to removal of separate and independent claims or causes of action to **federal court** should be adhered to strictly. Simon v. Gulf Coast Rental Tool Service, Inc., N.D.Tex.1976, 408 F.Supp. 911. Removal Of Cases 48

Words "separate" and "independent" within subsection (c) of this section providing that whenever separate and independent claim, which would be removable if sued on alone is joined with otherwise nonremovable claims, the entire case may be **removed** to **federal court**, are used conjunctively and to limit removals and simplify determination of removability; use of such language was not intended to allow removal merely because a claim could be prosecuted without presence or joinder of another party, but to provide that to be independently removable, claim had to be entirely separate and independent of controversy or claim involved in main lawsuit. Her Majesty Industries, Inc. v. Liberty Mut. Ins. Co., D.C.S.C.1974, 379 F.Supp. 658. Removal Of Cases 48.1

---- Doubts resolved against removal, construction, separate and independent claims

Federal courts should construe and apply 28 U.S.C.A. § 1441(c), allowing removal of case from state court where state complaint contains claim that both would be within federal jurisdiction if maintained alone and is separate and independent from other claims, in such manner so as to carry out intent to restrict removal, and all doubts should be resolved in favor of remand to state courts. Knowles v. American Tempering Inc., E.D.Pa.1985, 629 F.Supp. 832. Removal Of Cases 2; Removal Of Cases 107(7)

In the interpretation of plaintiff's pleading, relative to a motion to remove from state to **federal court** on ground of separate and independent claims, specific allegations control over general, and all doubts arising from defective, ambiguous and inartful pleadings should be resolved in favor of the retention of state court jurisdiction. Toanone v. Williams, E.D.Pa.1975, 405 F.Supp. 36. Removal Of Cases 61(2)

This section authorizing removal of state action to **federal court** whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action should be given a strict construction, and doubt should be resolved in favor of nonremoval. Douglass v. Park City Associates, E.D.Pa.1971, 331 F.Supp. 823. Removal Of Cases 48.1

Construction with other laws, separate and independent claims

Federal court's jurisdiction pursuant to subsec. (c) of this section is broader than court's jurisdiction under § 1332 of this title. Leinberger v. Webster, E.D.N.Y.1975, 66 F.R.D. 28. Removal Of Cases 48

---- Restrictive nature of section, purpose, separate and independent claims

Purpose behind enactment of subsec. (c) of this section providing that whenever separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, entire case may be removed, was to clarify and simplify old "separable controversy" standard, which had proved to be unsatisfactory, and to limit volume of litigation **removed** to **federal court**. Union Planters Nat. Bank of Memphis v. CBS, Inc., C.A.6 (Tenn.) 1977, 557 F.2d 84. Removal Of Cases 48.1

Removal jurisdiction under provisions of this section to effect that whenever separate and independent claim which would be removable if sued upon alone is joined with otherwise nonremovable claim entire case may be removed and district court may determine all issues or remand all matters not otherwise within original jurisdiction was intended to narrow **federal court** jurisdiction. Murphy v. Kodz, C.A.9 (Ariz.) 1965, 351 F.2d 163. Removal Of Cases 48

One of purposes of enactment of subsec. (c) of this section providing that whenever separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, entire case may be removed and district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction, was to actually reduce number of cases removable from state to **federal courts**. Burnett v. Eastman Kodak Co., E.D.Tenn.1977, 433 F.Supp. 514. Removal Of Cases 48.1

Purpose of Congress in changing provision of this section relating to removal of cases so as to use the language "separate and independent claim or cause of action" rather than using the test of "separability" was both to simplify the considerations to be made in determining the propriety of removal and also to help reduce the number of cases actually **removed** to **federal court**. Simon v. Gulf Coast Rental Tool Service, Inc., N.D.Tex.1976, 408 F.Supp. 911. Removal Of Cases 48

Term "separate and independent claim," within this section authorizing removal of state action to **federal court** whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, should be given a broad construction in order to carry out purpose of Congress to limit removal. Douglass v. Park City Associates, E.D.Pa.1971, 331 F.Supp. 823. Removal Of Cases 48.1

Subsec. (c) of this section providing that whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed was intended to restrict, not enlarge, diversity jurisdiction of **federal courts**. Young Spring & Wire Corp. v. American Guarantee & Liability Ins. Co., W.D.Mo.1963, 220 F.Supp. 222. Removal Of Cases 48

Law governing, separate and independent claims--Generally

Whether there was a separate and independent claim or cause of action which would justify **removal** to **federal court** from Massachusetts court, was a matter of interpretation of this section rather than of Massachusetts law. Charles Dowd Box Co. v. Fireman's Fund Ins. Co., C.A.1 (Mass.) 1962, 303 F.2d 57. **Federal Courts** 3025(5)

Question of what constitutes a single cause of action for purposes of removing a separate and independent claim or cause of action to **federal court** is one of federal law. In re Marriage of Pardee, C.D.Cal.1976, 408 F.Supp. 666. **Federal Courts** 3025(5)

Subsec. (c) of this section was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied, and hence such subsection must be construed as setting up its own criteria, irrespective of local law, for determining in what instances cases are to be removed from the state to **federal courts**. Industrial Lithographic Co. v. Mendelsohn, D.C.N.J.1954, 119 F.Supp. 284. Removal Of Cases 2

---- State law, law governing, separate and independent claims

Under subsec. (c) of this section, separable controversies were abolished, as a distinct ground of federal **removal** jurisdiction, but **federal courts** may still be governed by local law as to plaintiff's substantive right and the joint or several character of his claim, and federal authorities are still potent to the effect that plaintiff has right to select forum, to elect whether to sue joint tortfeasors jointly or separately, and to prosecute his own suit in his own way to a final determination. Bentley v. Halliburton Oil Well Cementing Co., C.A.5 (Tex.) 1949, 174 F.2d 788. **Federal Courts** 3067(1); **Removal** Of Cases 48.2

Substantive law of state in which acts giving rise to cause of action occurred determined whether there existed, in the pleading, in addition to one or more otherwise nonremovable claims or causes of actions, a separate and independent claim or cause of action which would permit removal. Kolb v. Prudential Ins. Co. of America, W.D.Ky.1959, 170 F.Supp. 97. **Federal Courts** 3025(5)

The substantive law of state is looked to in determining whether separate and independent claim or cause of action, removable from state to **federal court**, if sued on alone, is joined in complaint with otherwise nonremovable claims or causes of action, so as to authorize removal of entire case or remand of matters not otherwise within federal district court's original jurisdiction. State of Colo. ex rel. Land Acquisition Commission v. American Mach. & Foundry Co., D.C.Colo.1956, 143 F.Supp. 703. Removal Of Cases 61(2)

Under this section giving defendant the right to remove an entire case to the **federal court** under certain circumstances, the substantive law of the state wherein the wrong or injury occurred is determinative of whether there exists in the pleadings a separate and independent claim or cause of action which will permit removal. Brinkley v. Chesapeake & O. Ry. Co., S.D.W.Va.1956, 139 F.Supp. 480. **Federal Courts** 3025(5)

The law of forum is determinative of whether there exists among joint causes of action separate and independent claim, removability of which will entitle party to removal of entire case from state court to **federal court**. Kopitko v. J. T. Flagg Knitting Co., S.D.N.Y.1953, 111 F.Supp. 549. See, also, Kornegay v. Hardware Mut. Fire Ins. Co. of the Carolinas, D.C.N.C.1952, 106 F.Supp. 347. Removal Of Cases 48.3

In determining whether case was properly removed from state court to federal district court on ground of separable controversy, federal district court will refer to the substantive law of the state where the wrong and injury occurred in determining whether there is but a single wrong. Montrey v. Peter J. Schweitzer, Inc., D.C.N.J.1952, 105 F.Supp. 708. **Federal Courts** 3025(5)

Considerations governing, separate and independent claims--Generally

There is no "separate and independent claim or cause of action" under removal statute providing that entire case may be **removed** to **federal court** whenever separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, where there is single wrong to plaintiff, for which relief is sought, arising from interlocked series of transactions. Chaghervand v. CareFirst, D.Md.1995, 909 F.Supp. 304. Removal Of Cases 48.2

For purposes of **federal court's** exercising its pendent jurisdiction, claims are separate and independent if rights which plaintiff seeks to enforce are distinct. Marquette Nat. Bank of Minneapolis v. First Nat. Bank of Omaha, D.C.Minn.1976, 422 F.Supp. 1346. **Federal Courts** 2541

---- Common issues, considerations governing, separate and independent claims

Where issue to be tried by **federal court** on **removed** claim, judged at time of filing of petition for removal, is same issue which was to be tried between the same parties on nonremovable claim, then claim sought to be removed is not independent and may not be removed under subsec. (c) of this section dealing with removability of cases when a separate removable claim is joined with one or more nonremovable claims. National Farmers Union Property & Cas. Co. v. Scharberg, D.C.Mont.1968, 287 F.Supp. 604. Removal Of Cases 48.1

---- Common questions of law and fact, considerations governing, separate and independent claims

Removal of complaint was proper under section of removal statute governing claims over which district court would have original jurisdiction, even though complaint plead single cause of action in four counts, only one of which arose under federal law and three of which arose under state law, where all four counts arose out of same nucleus of operative fact, involving plaintiff's transfer and termination, such that district court had authority to take supplemental jurisdiction over pendent state claims. Porter v. Roosa, S.D.Ohio 2003, 259 F.Supp.2d 638. **Federal Courts** 2544; **Removal** Of Cases 19(1)

Plaintiffs' state law claims arising from defendants' alleged wrongful acts perpetrated in negotiation and performance of construction contracts were not "separate and independent" from plaintiffs' claim against defendants for violations of Racketeer Influenced and Corrupt Organization Act (RICO), for purposes of subsection of removal statute providing that entire case could be **removed** to **federal court** whenever "separate and independent" claim or cause of action was joined with otherwise nonremovable claims or causes of action, where state claims and RICO claim derived from common nucleus of operative fact. Broad, Vogt & Conant, Inc. v. Alsthom Automation, Inc., E.D.Mich.2002, 186 F.Supp.2d 787. Removal Of Cases 49.1(3)

Where key fact involving both defendants was that corporate defendant received trademark rights from individual defendant and disputes between plaintiff and corporate defendant would necessarily involve determination of plaintiff's trademark rights vis-a-vis those of the individual defendant and counterclaims and defenses could rest on validity of matters asserted by the individual defendant and on validity of license which individual defendant, who was of same citizenship as plaintiff, conveyed to the corporate defendant, there was no separate and independent claim warranting removal of suit from state to **federal court**. American Brahmental Ass'n v. American Simmental Ass'n, W.D.Tex.1977, 443 F.Supp. 163. Removal Of Cases 49.1(1)

---- Single recovery, considerations governing, separate and independent claims

In paving subcontractor's related actions against county, townships, and bonding company to recover for work performed under subcontract with bankrupt construction company, claim against nonresident bonding company was not "separate and

independent claim" from those against municipal defendants who were residents of same state as subcontractor, inasmuch as subcontractor was entitled to only one recovery, and thus, cases were not **removable** to **federal court**. Jersey Paving Co., Inc. v. Fidelity & Deposit Co. of Maryland, D.C.N.J.1985, 603 F.Supp. 414. Removal Of Cases 49.1(1)

Assuming arguendo that plaintiff in state court assumpsit action was a third-part beneficiary of contract wherein nonresident corporate defendant obligated itself to pay resident corporate defendant's debt to plaintiff, plaintiff's rights, if any, under such theory were inexorably tied to performance of his contract with resident corporation; accordingly, complaint which sought only one recovery for alleged breach of contract and claimed only one sum of money against both defendants jointly did not state a "separate and independent claim" or cause of action against nonresident corporation which could be **removed** to **federal court** if sued upon alone. Douglass v. Park City Associates, E.D.Pa.1971, 331 F.Supp. 823. Removal Of Cases 49.1(3)

First count in action by Missouri school district against Iowa insurer, by which school district sought to recover face amount of policy for loss of school building and its contents, might be considered a separable controversy from second count against insurer's agent, who was a resident of Missouri, but it was not a "separate and independent claim or cause of action" where one loss was alleged and only one recovery sought, so that insurer would not be entitled to have the action **removed** to **federal court** under subsec. (c) of this section. El Dorado Springs R-2 School Dist. v. Moos, W.D.Mo.1967, 264 F.Supp. 815. Removal Of Cases 49.1(4)

Contingent or dependent claims, separate and independent claims

An ERISA claim brought against a third-party defendant was not "separate and independent" from a nursing home's state law collection claim against the third-party plaintiff, and thus the third-party defendant could not remove the case to **federal court**, where ERISA claims were contingent on nursing home's claims for services rendered and, if nursing home's claims failed, there was little, if any, need to address the claims against the third-party defendant. Sunny Acres Skilled Nursing v. Williams, N.D.Ohio 1990, 731 F.Supp. 1323. Removal Of Cases 56

Federal question, separate and independent claims

In action by worker, who allegedly contracted malignant mesothelioma from asbestos exposure, against, inter alia, manufacturers, former employer, and premises owners, alleging negligence and strict liability, district court lacked supplemental jurisdiction over worker's claims and third-party claims by former employer against company that allegedly exposed worker to asbestos cargo, seeking contribution or indemnification, based on its federal question jurisdiction over employer's third-party contractual indemnity claims against unions, which were preempted by the LMRA, where employer's claims against unions were separate and independent from its claims against company and from worker's claims. Genusa v. Asbestos Corp. Ltd., M.D.La.2014, 18 F.Supp.3d 773. **Federal Courts** 2546; **Federal Courts** 2563

Class actions, separate and independent claims

Class Action Fairness Act (CAFA) did not confer federal jurisdiction over action brought by nonprofit organization against producers of pet food products, alleging they misled public by representing the products were natural and contained no artificial preservatives, in violation of District of Columbia Consumer Protection Procedures Act (DCCPPA); organization did not label action as class action when it was filed in District of Columbia court, it did not allege Federal Rule of Civil Procedure requirements for class certification had been met and, after learning of clerical error in its discovery requests, it unequivocally disclaimed to seek class certification both before and after its discovery requests. Toxin Free USA v. J.M. Smucker Company, D.D.C.2020, 2020 WL 7024209. **Federal Courts** 2425

Garnishment actions, separate and independent claims

Arizona garnishment proceeding was separate and independent "civil action," and thus was subject to **removal** to **federal court**. Labertew v. Langemeier, C.A.9 (Ariz.) 2017, 846 F.3d 1028, on remand 2018 WL 1876901. Removal of Cases 5

Joinder of claims, separate and independent claims

"Joinder of claims" in removal statute refers to joinder of claims by original plaintiff, making it improbable that third-party defendants can **remove** to **federal court**. Waymire v. Leonard, S.D.Ohio 2010, 724 F.Supp.2d 876. Removal Of Cases 56

Third-party defendant may remove case pursuant to statute permitting removal whenever separate and independent claim or cause of action within federal question jurisdiction is joined with otherwise non-removable claims. Washington v. Ernster, E.D.Tex.2007, 551 F.Supp.2d 568, appeal after remand from **federal court** 255 S.W.3d 402, review denied. Removal Of Cases 59

Severance of claims, separate and independent claims

Preserving employer and its franchisor's right to remove claims arising under federal law outweighed other competing considerations, and, thus, employee's state law claim alleging retaliation for filing a workers' compensation claim would be severed and remanded to state court, while District Court would retain employee's federal discrimination claims, since they were within the Court's original jurisdiction, and retain state law claims for termination in violation of public policy and intentional infliction of emotional distress, since they formed part of same case or controversy as the federal claims and were within the Court's supplemental jurisdiction. Brown v. K-MAC Enterprises, N.D.Okla.2012, 897 F.Supp.2d 1098. **Federal Courts** 2546; **Removal** Of Cases 11; Removal Of Cases 19(5); Removal Of Cases 101.1; Removal Of Cases 102

State-court intervenors' wrongful death claims against Amtrak, railway company, and government defendants were separate "civil action" from plaintiff's wrongful death claims, and were therefore independently **removable** to **federal court**; intervenors' claims were based on different railroad accident than accident at issue in plaintiff's claims, the two accidents occurred on different days, at different times of day, and involved trains traveling at different speeds and operated by different crews, also, issues regarding comparative negligence of the drivers killed in the two accidents were different, because plaintiff's driver had blood alcohol level almost twice the legal limit, whereas intervenors' driver's blood had presence of both alcohol and marijuana, moreover it was unlikely that determinations' on intervenors claims would affect determinations in plaintiff's case, particularly given that state court permitted intervention only for purposes of discovery. Stark-Romero v. National R.R. Passenger Co., D.N.M.2011, 763 F.Supp.2d 1231. Removal Of Cases 49.1(6); Removal Of Cases 49.1(7)

Pendent parties, separate and independent claims

Statute authorizing removal of entire case if separate and independent claim which would be **removable** to **federal court** if sued alone is joined with otherwise nonremovable claims does not authorize pendent party jurisdiction. Perkins v. Halex Co. Div. of Scott Fetzer, N.D.Ohio 1990, 744 F.Supp. 169. Removal Of Cases 58

Claims joined by original plaintiff, separate and independent claims--Generally

Plaintiff's original petition controls issue of separate and independent claims for purposes of **removal** to **federal court**. Simon v. Gulf Coast Rental Tool Service, Inc., N.D.Tex.1976, 408 F.Supp. 911. Removal Of Cases 61(2)

---- Counterclaims, claims joined by original plaintiff, separate and independent claims

Counterclaim filed in mortgagee's original foreclosure proceeding was not **removable** to **federal court**, even though state court administrative order effectuated bifurcation of case under Maryland law by requiring mortgagor's counterclaim, which asserted federal defense, and which was filed subsequent to foreclosure sale, to be opened as new case by clerk; original foreclosure action was not **removable** to **federal court**, severance of case as result of administrative order did not create separate civil action subject to removal, and bifurcated cases were intended to remain attached and coordinated. Wittstadt v. Reyes, D.Md.2015, 113 F.Supp.3d 804. Removal of Cases 56

---- Cross-claims, claims joined by original plaintiff, separate and independent claims

Under this section providing that, if separate and independent claim which is removable is joined with nonremovable claim, entire cause may still be **removed** to **federal court**, it is only separate and independent claims joined by plaintiff which are to be considered as being removable; cross claims or third-party actions by defendants are not to be so considered. White v. Hughes, W.D.Tenn.1975, 409 F.Supp. 1005. Removal Of Cases 58

Federal court does not look to cross petition of defendants against added party defendant and plaintiff to determine original jurisdiction under this section providing that any civil action brought in a state court of which the federal district courts have original jurisdiction may be removed to district court for district and division embracing place where such action is pending; in a removed case under this section the court looks to plaintiff's civil action brought in the state court. Mid-State Homes, Inc. v. Swain, W.D.Okla.1971, 331 F.Supp. 337. Removal Of Cases 11

---- Third-party claims, claims joined by original plaintiff, separate and independent claims

Oil company's third-party claim for indemnity was not claim separate and independent of underlying suit where indemnity claim was based on third party's negligence, rather than on separate and independent contractual obligation, and thus personal injury suit against oil company for injuries sustained on drilling rig, was improperly **removed** to **federal court** by third-party defendant and would be remanded. In re Wilson Industries, Inc., C.A.5 (Tex.) 1989, 886 F.2d 93. Removal Of Cases 24

If third-party complaint states a separate and independent claim which, if sued upon alone, could have been brought properly in **federal court**, there should be no bar to removal on motion of the third-party defendant. Carl Heck Engineers, Inc. v. Lafourche Parish Police Jury, C.A.5 (La.) 1980, 622 F.2d 133. Removal Of Cases 48.1

Insurer, as third-party defendant, was not entitled to remove underlying collection action to **federal court**; **removal** statute makes no reference to third-party defendants, and third-party claim for indemnification brought by patient against her health insurer was not separate and independent from primary claim of physician against patient for payment for services rendered. Persoff v. Aran, S.D.Fla.1992, 792 F.Supp. 803. Removal Of Cases 56

Third-party defendant did not have right to **remove** case to **federal court**; statute allowing **removal** of claim joined to nonremovable claims applied only to claims joined by plaintiff. Kaye Associates v. Board of Chosen Freeholders-County of Gloucester, D.N.J.1991, 757 F.Supp. 486. Removal Of Cases 59

Third-party defendant may **remove** action to **federal court**, provided that third-party claim is separate and independent from main cause of action. Patient Care, Inc. v. Freeman, D.N.J.1991, 755 F.Supp. 644. Removal Of Cases 59

Suit on open accounts, involving third-party claim for nonpayment of medical expenses under employee welfare benefit health insurance plan, could not be **removed** to **federal court** by third-party defendant on ground that third-party claim was based upon

ERISA, a "federal question" within **federal court's** original jurisdiction; third-party claim was not separate and independent. Baldwin County Eastern Shore Hosp. Bd., Inc. v. Windham, S.D.Ala.1989, 706 F.Supp. 38. Removal Of Cases 56

Although third-party defendant is entitled to **remove** action to **federal court**, such **removal** is limited by the fact that **federal court** must have had original jurisdiction of action, jurisdiction in state court must have been proper, and third-party claim must have been separate and independent of claims advanced by original plaintiff. Midstate Bank v. Murray, D.C.Mont.1984, 592 F.Supp. 798. Removal Of Cases 10; Removal Of Cases 11; Removal Of Cases 56

Subsec. (c) of this section intended to allow an original defendant to remove an entire case to **federal court** when federal jurisdiction exists as to a particular claim even though plaintiff had joined with that claim another nonremovable cause of action against the "removing defendant" or a codefendant did not afford a third-party defendant a basis for removal. Continental Resources and Mineral Corp. v. Continental Ins. Co., S.D.W.Va.1982, 546 F.Supp. 850. Removal Of Cases 59

Right to removal is limited to those claims joined by the original plaintiff, and fact that third-party claims, if sued on alone, could be brought in **federal court** is insufficient to support federal jurisdiction over the entire action when sought to be removed by third-party defendants. Lowe's of Montgomery, Inc. v. Smith, M.D.Ala.1977, 432 F.Supp. 1008. Removal Of Cases 58

A third-party claim cannot afford basis for **removal** to **federal court** unless there exists a "separate and independent claim or cause of action" within provision of subsec. (c) of this section. Wayrynen Funeral Home, Inc. v. J.G. Link & Co., D.C.Mont.1968, 279 F.Supp. 803. Removal Of Cases 56

Damages claims, separate and independent claims--Generally

Insureds' request for punitive damages in addition to compensation within coverage of four fire policies issued by two foreign insurance companies and two domestic insurance companies, arising out of companies' refusal to pay for fire loss, did not constitute separate and independent claim from claim to recover on policies for purpose of being **removable** to **federal court** under provision of this section allowing removal when separate and independent claim, which would be removable if sued upon alone, is joined with nonremovable claim. Sam Evans Auto Parts Co., Inc. v. Travelers Indem. Co., E.D.Pa.1975, 391 F.Supp. 759. Removal Of Cases 49.1(4)

Absence of removable claims, separate and independent claims

Removal of federal contractor's state law claim against subcontractor's bank for breach of fiduciary duty, was improper, even if original complaint sufficiently pleaded Miller Act claim in separate count, where only count based exclusively on state law remained at time of trial and judgment. U.S. for Use of Owens-Corning Fiberglass Corp. v. Brandt Const. Co., C.A.7 (Ill.) 1987, 826 F.2d 643, certiorari denied 108 S.Ct. 751, 484 U.S. 1026, 98 L.Ed.2d 764. **Federal Courts** 2025

Entire case removed, separate and independent claims--Generally

Where a claim or cause of action filed in state court includes claims **removable** to **federal court** as well as concurrent claims which might not be removable, entire claim is nevertheless removable for decision by federal district court. Beasley v. Union Pac. R. Co., D.C.Neb.1980, 497 F.Supp. 213. Removal Of Cases 58

Defendant who has right to remove one count of state court action to **federal court** may **remove** entire action. Naimaster v. National Ass'n for Advancement of Colored People, D.C.Md.1969, 296 F.Supp. 1277, affirmed 423 F.2d 1227. Removal Of Cases 58

---- Jurisdiction of court, entire case removed, separate and independent claims

Court faced with plaintiffs' motion to remand as well as defendant's motion to stay, pending resolution of its motion for transfer and consolidation before the Judicial Panel on Multidistrict Litigation (JPML), would rule on issue of federal jurisdiction, rather than leave resolution of that issue to an eventual transferee court, since issue of jurisdiction was specific only to lawsuit before the court; federal jurisdiction turned solely on question of whether defendant's **removal** to **federal court** was timely, so it had no bearing upon cases being considered for consolidation, and resolution of federal jurisdiction would assist JPML panel by clarifying the number of cases affected by its ruling. Ritchie Capital Management, LLC v. General Elec. Capital Corp., S.D.N.Y.2015, 87 F.Supp.3d 463. Removal of Cases 107(.5)

Federal court having jurisdiction over main claim has jurisdiction over any related claim. Sylgab Steel & Wire Corp. v. Strickland Transp. Co., E.D.N.Y.1967, 270 F.Supp. 264. **Federal Courts** 2542

---- Miscellaneous actions, entire case removed, separate and independent claims

State's otherwise non-removable claim, seeking redress for professor's alleged failure to remit his professional fees to university, was "separate and independent" from professor's § 1983 counterclaim seeking redress from regents and university president for terminating him, and therefore, entire case could be **removed** to **federal court** by regents and university. State of Tex. By and Through Bd. of Regents of University of Texas System v. Walker, C.A.5 (Tex.) 1998, 142 F.3d 813, certiorari denied 119 S.Ct. 865, 525 U.S. 1102, 142 L.Ed.2d 768. Removal Of Cases 56

Environmental groups' claims in state court seeking damages on behalf of the public for injury to natural resources, which were removable, were separate and independent from state court claims of class action plaintiffs seeking compensatory relief for damages suffered by each member of their class and since groups' claims were removable, the entire case was removable under statute providing that whenever separate and independent cause is joined with one or more otherwise nonremovable claims, entire case may be **removed** to **federal court**. Eyak Native Village v. Exxon Corp., C.A.9 (Alaska) 1994, 25 F.3d 773, certiorari denied 115 S.Ct. 351, 513 U.S. 943, 130 L.Ed.2d 307, rehearing denied 115 S.Ct. 627, 513 U.S. 1036, 130 L.Ed.2d 534, certiorari denied 115 S.Ct. 778, 513 U.S. 1102, 130 L.Ed.2d 673, certiorari denied 115 S.Ct. 779, 513 U.S. 1102, 130 L.Ed.2d 673. Removal Of Cases 58

Removal to **federal court**, of three Rhode Island actions arising out of nightclub fire, was proper under removal statute; moving defendant was a named defendant in two federal actions brought under Multiparty, Multiforum, Trial Jurisdiction Act (MMTJA) and arising out of same incident. Passa v. Derderian, D.R.I.2004, 308 F.Supp.2d 43. Removal Of Cases 26

Where claim under the Federal Employers' Liability Act, § 51 et seq. of Title 45, was joined with a separate, independently removable claim, defendant could remove claim under Federal Employers' Liability Act from Pennsylvania State Court and federal district court thereafter had pendent jurisdiction of cause of action under Federal Employers' Liability Act, § 51 et seq. of Title 45. Hages v. Aliquippa & Southern R. Co., W.D.Pa.1977, 427 F.Supp. 889. **Federal Courts** 2548; **Removal** Of Cases 58

Pleadings, separate and independent claims--Generally

Plaintiffs' pleading controls in determining whether case involves separate and independent claim or cause of action, for purpose of permitting removal of case from state to **federal court**. Burnett v. Eastman Kodak Co., E.D.Tenn.1977, 433 F.Supp. 514. Removal Of Cases 61(2)

To determine if plaintiffs suffered a single wrong in applying this section permitting the joinder of removable claims or causes of action with nonremovable claims or causes of action before **federal court**, the pleadings control. Anderson v. Union Pac. Coal Co., D.C.Wyo.1971, 332 F.Supp. 605. Removal Of Cases 61(1)

Single wrong arising from interlocking transactions, separate and independent claims--Generally

Where there is single wrong to plaintiff for which relief is sought, arising from interlocked series of transactions, there is no separate and independent claim or cause of action under this section permitting removal of entire case from state court to **federal court** whenever separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action. Burnett v. Eastman Kodak Co., E.D.Tenn.1977, 433 F.Supp. 514. Removal Of Cases 58

---- Admiralty and maritime actions, single wrong arising from interlocking transactions, separate and independent claims

Nicaraguan crewmember's Jones Act claims brought in state court against Bahamian cruise ship owner was **removable** to **federal court** pursuant to Convention on Recognition and Enforcement of Foreign Arbitral Awards, since claim was subject to arbitration provision in crewmember's signed employment contract with cruise ship owner. Bendlis v. NCL (Bahamas), Ltd., S.D.Fla.2015, 112 F.Supp.3d 1339. Removal of Cases 19(5)

Section 1981 and Title VII claims by former chief steward aboard vessel were not "separate and independent" from her admiralty and nonremovable Jones Act claims, so removal of entire case to **federal court** was improper; chief steward's allegations of negligence, unseaworthiness, failure to provide a safe place to work, and employment discrimination all arose out of interlocked series of transactions between her and vessel's captain. Brooks v. Maersk Line, Ltd., E.D.Va.2005, 396 F.Supp.2d 711, on remand 2006 WL 2918942. Removal Of Cases 49.1(1)

In suit by corporation to recover damages for value of shipment of eels which spoiled while being transported from New Jersey to Italy, corporation, although it stated five separate counts, was essentially seeking recovery for a single injury, the loss of its eels, and named as defendants its insurer, Yugoslav organization which operated the ship that transported the eels to Italy, and insurer of the firm that transported the eels within the United States because it was unable to ascertain how the damage occurred; therefore, claims by corporation against its insurer and Yugoslav organization were not separate and independent from the claim against corporation's insurer so as to allow removal of the entire case to **federal court** under subdivision of this section. Superior Fish Co., Inc. v. Royal Globe Ins. Co., E.D.Pa.1981, 521 F.Supp. 437. Removal Of Cases 49.1(3)

Pennsylvania plaintiff's claims against Irish corporation for unseaworthiness and against Pennsylvania corporation for negligence were not separate and independent causes of action permitting Irish corporation to **remove** case to **federal court**, where plaintiff sought from both damages for injury in single accident. Durham v. Irish Shipping, Limited, E.D.Pa.1962, 204 F.Supp. 68. Removal Of Cases 49.1(8)

---- Airplane accident actions, single wrong arising from interlocking transactions, separate and independent claims

Action arising out of airplane crash wherein all defendants were charged with improper inspection and maintenance of airplane involved was not removable from state to **federal court** on ground of separate and independent claim or cause of action, even though four defendants were additionally charged with improper service and operation of airplane and two defendants were additionally charged with failure to adequately design and manufacture airplane, as single wrong for which relief was sought was the alleged failure to afford safe air passage to plaintiff which arose from interlocked series of transactions involving all defendants. Morrison v. Jack Richards Aircraft Co., W.D.Okla.1971, 328 F.Supp. 580. Removal Of Cases 49.1(7)

---- Insurance actions, single wrong arising from interlocking transactions, separate and independent claims

Assuming that third-party defendant could **remove** case to **federal court**, third-party claim was not sufficiently separate and independent so as to provide a basis for removal; main claim, that employer had failed to reimburse employee for medical expenses, and third-party claim that insurer had failed to provide coverage, relied on related transactions (duty to provide insurance coverage) and sought same relief (compensation for employee's medical expenses). Andrews v. Electric Motor Systems, Inc., S.D.Ohio 1991, 767 F.Supp. 853. Removal Of Cases 56

University's fourth-party complaint against insurer seeking declaratory judgment that insurer had duty to defend university in underlying state medical malpractice action was not sufficiently separate and independent from underlying action to justify its **removal** to **federal court** where fourth-party dispute could be traced back to single wrong of alleged negligent treatment of patient, notwithstanding that fourth-party action was contract claim and underlying state action was tort claim. Crawford by Crawford v. Hospital of Albert Einstein College of Medicine, S.D.N.Y.1986, 647 F.Supp. 843. Removal Of Cases 49.1(4)

Plaintiff's claims against uninsured motorist insurer under contract and for bad-faith withholding of payment did not state "separate and independent" claims from that against other driver involved in collision, inasmuch as there was but one essential "wrong" from which all claims arose; thus, since plaintiff and other driver were citizens of same state, action was not properly **removable** to **federal court**. Bull v. Greenwood, W.D.Ark.1985, 610 F.Supp. 874. Removal Of Cases 49.1(4)

Where four policies issued by two domestic insurance companies and two foreign insurance companies were identical, insuring against same perils, covering same property and containing clauses requiring loss to be borne by each company involved and where insureds sought to recover under policies for damage resulting from single fire, insurers' refusal to pay for loss, even if grounded on different reasons, constituted a "single wrong" so that insureds' claim against foreign companies was not separate and independent claim from claim against domestic companies and could not be **removed** to **federal court** under provision of this section allowing removal when a separate and independent claim removable if sued upon alone, is joined with nonremovable claim. Sam Evans Auto Parts Co., Inc. v. Travelers Indem. Co., E.D.Pa.1975, 391 F.Supp. 759. Removal Of Cases 49.1(4)

---- Labor and employment actions, single wrong arising from interlocking transactions, separate and independent claims

Removal of complaint was proper under section of removal statute governing claims over which district court would have original jurisdiction, even though complaint plead single cause of action in four counts, only one of which arose under federal law and three of which arose under state law, where all four counts arose out of same nucleus of operative fact, involving plaintiff's transfer and termination, such that district court had authority to take supplemental jurisdiction over pendent state claims. Porter v. Roosa, S.D.Ohio 2003, 259 F.Supp.2d 638. **Federal Courts** 2544; **Removal** Of Cases 19(1)

Railroad employee's motion to enjoin his employer's grievance and arbitration proceeding under Railway Labor Act was claim separate and independent of employee's claim in state court under Federal Employers' Liability Act, and RLA claim was **removable** to **federal court**; FELA claim was based on workplace conditions and employer's alleged negligence, while RLA claim was based on employee's actions, parties' collective bargaining agreement, and possibly employer's work rules. Dibble v. Grand Trunk Western R. Co., E.D.Mich.1988, 699 F.Supp. 123. Removal Of Cases 49.1(1)

Plaintiff's FELA claim was separate and independent from his state Handicappers' Act claim, where claims alleged different wrongs and involved different sets of facts, and thus entire case could be **removed** to **federal court** despite nonremovability of FELA claim. Samczyk v. Chesapeake & Ohio Ry. Co., E.D.Mich.1986, 643 F.Supp. 79. Removal Of Cases 49.1(1); Removal Of Cases 58

Count of complaint alleging premises liability and personal injury damages against brewery was not separate and independent from two other counts (admittedly preempted by federal law and thus properly removed from state to **federal court**) against brewery and individual seeking severance pay, three months free medical and health insurance coverage, and damages for emotional distress, even though plaintiff sought different relief in the various counts, wrongs alleged arose from interlocked series of transactions. Munie v. Stag Brewery, Div. of G. Heileman Brewing Co., Inc., S.D.Ill.1989, 131 F.R.D. 559. Removal Of Cases 49.1(1)

---- Stocks and securities actions, single wrong arising from interlocking transactions, separate and independent claims

Claims brought by stockholder on its own behalf and on behalf of corporation in derivative suit were not separate and independent such that suit was not required to be **removed** from **federal court** despite same citizenship for corporation and stockholder where wrong for which relief was sought arose from interlocked series of transactions. Visual Sciences, Inc. v. Matsushita Elec. Indus. Co., Ltd., E.D.N.Y.1981, 528 F.Supp. 1000. Removal Of Cases 49.1(1)

---- Tort actions, single wrong arising from interlocking transactions, separate and independent claims

Allegations that hearing loss was caused by malfunction of telecommunications system and that system was installed after careful analysis and research into various parts, set forth a single wrong as to which all defendants were alleged to have contributed to injury, so that claim against one manufacturer responsible for only a portion of the system was not a distinct and separate claim **removable** to **federal court** independently of the remaining claims. Harris v. G.C. Services Corp., S.D.N.Y.1987, 651 F.Supp. 1417. Removal Of Cases 49.1(7)

---- Unfair competition actions, single wrong arising from interlocking transactions, separate and independent claims

Coin dealer's state law unfair competition claims against its former employees did not involve substantial question of federal law under Lanham Act and were not **removable** to **federal court**; state causes of action for unfair competition were separate and independent claims distinguishable from federal trademark infringement or unfair competition claim under Lanham Act. 1st Nat. Reserve, L.C. v. Vaughan, E.D.Tex.1996, 931 F.Supp. 463. Removal Of Cases 49.1(1)

---- Zoning actions, single wrong arising from interlocking transactions, separate and independent claims

Resident's third-party complaint against town board's individual members, alleging enforcement of zoning ordinance violated resident's constitutional rights, was not separate and independent from city's nonremovable zoning enforcement action against resident and thus, third-party complaint would not be **removed** to **federal court**; affirmative defenses, counterclaims and third-party action all related to interlocking series of transactions that gave rise to zoning enforcement suit. Elba Tp., Dodge County, Wis. v. Steffenhagen, E.D.Wis.1987, 664 F.Supp. 1238. Removal Of Cases 49.1(1)

---- Miscellaneous actions, single wrong arising from interlocking transactions, separate and independent claims

Because blood recipient and his wife alleged a single wrong against the American Red Cross and physician with respect to transfusion of blood which was allegedly contaminated by AIDS (Acquired Immune Deficiency Syndrome) virus, claims against the physician were not separate and independent so that action could not be **removed** to **federal court** based on jurisdiction over the claim against the American Red Cross. Doe v. American Red Cross, D.Or.1991, 763 F.Supp. 1084. Removal Of Cases 49.1(7)

Theories of liability or recovery, separate and independent claims--Generally

Multiple theories of liability against multiple defendants are not separate and independent claims, for purposes of exception to unanimity requirement for defendants' **removal** to **federal court**, when there is only one wrong. Mullins v. Hinkle, S.D.W.Va.1997, 953 F.Supp. 744. Removal Of Cases 50; Removal Of Cases 54

A separate substantive cause of action, warranting **removal** to **federal court**, cannot be based on different theories of liability alone. Staples v. O'Day Corp., D.C.N.H.1963, 224 F.Supp. 576. Removal Of Cases 50

Where removable cause is joined with nonremovable cause, entire case may be **removed** to **federal court** if each cause of action is grounded on separate and independent basis of liability under the substantive law. Seigler v. American Sur. Co. of N. Y., N.D.Cal.1957, 151 F.Supp. 556. Removal Of Cases 58

---- Contract actions, theories of liability or recovery, separate and independent claims

The District Court's original jurisdiction over prior related litigation and continuing jurisdiction over the litigation's settlement did not vest the District Court with jurisdiction over energy and utility auditing and consulting firm's subsequent state-law breach of contract claim against city which sought 20% of the proceeds of the prior settlement, as would support federal jurisdiction on removal, where the original action was dismissed with prejudice on settlement, firm's action against city was a separate civil action distinct from prior litigation, and the District Court's continued jurisdiction over the settlement was limited to resolving potential future disputes regarding attorneys' fees and protective orders. Energy Management Services, LLC v. City of Alexandria, C.A.5 (La.) 2014, 739 F.3d 255. **Federal Courts** 2553

---- Indemnity, theories of liability or recovery, separate and independent claims

Although defendant's cross-claim for indemnity against codefendant was related to plaintiff's breach of contract claim against codefendant and its claim for recovery from defendant on payment and performance bond it issued in connection with contract, cross-claim constituted a “separate and independent” claim for purposes of statute providing that whenever separate and independent claim is joined with one or more otherwise nonremovable claims, entire case may be **removed** to **federal court** and thus, action was **removable** to **federal court** by codefendant, without joinder of defendant. Acme Brick Co. v. Agrupacion Exportadora de Maquinaria Ceramica, N.D.Tex.1994, 855 F.Supp. 163. Removal Of Cases 82

---- Insurance actions, theories of liability or recovery, separate and independent claims

City that was impleaded by insurer as third-party defendant on subrogation claim in insured's action to recover under policy insuring building damaged in the September 11, 2001 terrorist attacks could not remove entire action to **federal court** on ground the subrogation claim arose under the Air Transportation Safety and System Stabilization Act (ATSSSA); primary action was outside scope of district court's jurisdiction, and there was no separate and independent action on which to base removal, since insurer's subrogee status had not yet accrued. St. John's University v. Certain Underwriters at Lloyd's, S.D.N.Y.2011, 760 F.Supp.2d 381. Removal Of Cases 19(1); Removal Of Cases 49.1(4)

---- Stocks and securities actions, theories of liability or recovery, separate and independent claims

Where plaintiffs' inclusion of claims under § 78j of Title 15, for which jurisdiction was allegedly exclusively vested in **federal court**, along with claims arising under §§ 77e and 77g of Title 15 and state law, was nothing more than presentation of alternative theories of recovery for the same wrongs, the claims under § 78a et seq. of Title 15 were not “separate and independent” from

nonremovable claims, and removal was not thereby justified under this section. Armstrong v. Monex Intern., Ltd., N.D.Ill.1976, 413 F.Supp. 567. Removal Of Cases 49.1(1)

---- Tort actions, theories of liability or recovery, separate and independent claims

Injured motorist's claims against automobile manufacturer were not separate and independent from claims against seller even though one claim was asserted under products liability and other was under redhibition and, accordingly, manufacturer was not entitled to **remove** case to **federal court**; various legal theories of recovery all arose from single action in which seat belt allegedly failed to properly secure motorist. Tullier v. Chrysler Motors Corp., M.D.La.1990, 733 F.Supp. 237. Removal Of Cases 50

Third-party complaint filed pursuant to Pa.R.C.P. No. 2252(a) and seeking to hold third-party defendant exclusively liable to plaintiffs for damage caused by fire did not create a "separate and independent" claim or cause of action **removable** to **federal court**, because issues of causation and liability presented by third-party complaint were identical to those found in main action. Chase v. North American Systems, Inc., W.D.Pa.1981, 523 F.Supp. 378. Removal Of Cases 56

Remand, separate and independent claims--Generally

After removal, the case either stays in **federal court** or returns to state court as a unit, subject to the district court's option to remand a separate and independent nonremovable claim. In re Mut. Fund Market-Timing Litigation, C.A.7 (Ill.) 2006, 468 F.3d 439. Removal Of Cases 95; Removal Of Cases 104

---- Discretion of court, remand, separate and independent claims

When an entire action is **removable** to **federal court** pursuant to this section relating to removal of entire case when a separate claim is joined with one or more otherwise nonremovable claims, retention or remand of any claims not within district court's original jurisdiction rests in the sound discretion of district court. People of State of Ill. ex rel. Bowman v. Home Federal Sav. and Loan Ass'n, C.A.7 (Ill.) 1975, 521 F.2d 704. Removal Of Cases 58

Removal statute authorizing removal of entire case involving separate and independent claim that would be removable from state to **federal court** is affirmative grant of federal jurisdiction which has element of discretion; court may remand judicially insufficient main case. Perkins v. Halex Co. Div. of Scott Fetzer, N.D.Ohio 1990, 744 F.Supp. 169. Removal Of Cases 58; Removal Of Cases 101.1

When a complaint states multiple causes of action which are separate and independent, entire cause must be removed and question of retaining any cause of action not within **federal court's** original jurisdiction or remanding such cause of action to state court is a matter to be decided by the **federal court** in its discretion. Killian v. Union L.P. Gas System, Inc., W.D.Mo.1983, 568 F.Supp. 679. Removal Of Cases 58

Where removed case involves nonremovable claims as well as separate and independent **removable** claim, **federal court** has discretion to determine whether entire case should remain in **federal court** or nonfederal claims should be remanded to state court. Leinberger v. Webster, E.D.N.Y.1975, 66 F.R.D. 28. Removal Of Cases 58

---- Necessity of state court filing, remand, separate and independent claims

Where removable claim was not filed in state court proceeding, provision of this section governing **removal** jurisdiction of **federal court** with discretion to remand nonremovable claims if one removable claim was joined with nonremovable claims

in state court was not applicable. Libhart v. Santa Monica Dairy Co., C.A.9 (Cal.) 1979, 592 F.2d 1062. Removal Of Cases 107(.5)

Federalism concerns warranted remand of removed action brought by father of prisoner who died while in custody against state of Virginia and others, alleging that prisoner died when he was placed in choke hold and stopped breathing during a medical examination before his planned transfer to a hospital for involuntary commitment, although a **federal court** would have original jurisdiction over the complaint because it contained federal claims, where claim under the Virginia Tort Claims Act (VTCA) could only be heard in Virginia courts. Creed v. Virginia, E.D.Va.2009, 596 F.Supp.2d 930. Removal Of Cases 101.1

---- State court jurisdiction, remand, separate and independent claims

Where defendant **removing** case to **federal court** had complied with requirements of this section relating to removal, state court was thereby deprived of jurisdiction to proceed with any phase of litigation, unless and until case would be remanded, and issues of propriety of removal and of whether two suits involved were separate and independent could only be passed upon by United States district court on motion to remand, and plaintiff was properly enjoined by **federal court** from proceeding in state court. Lowe v. Jacobs, C.A.5 (Tex.) 1957, 243 F.2d 432, certiorari denied 78 S.Ct. 65, 355 U.S. 842, 2 L.Ed.2d 52. Courts 508(8); Removal Of Cases 95

---- Predominance of state law claims, remand, separate and independent claims

State law issues were not predominate on appeal of decision finding that mortgagors' claims against their mortgage lenders, alleging that lenders engaged in the unauthorized practice of law by charging a fee for preparation of loan documents by nonlawyers, were preempted by federal regulation, and thus remand to state court would be inappropriate under the statute affording **federal courts** discretion to remand all otherwise nonremovable matters in which state law predominated, since sole issue on appeal was whether Missouri laws on which the claims were based were preempted, and preemption was always a federal question. Casey v. F.D.I.C., C.A.8 (Mo.) 2009, 583 F.3d 586, certiorari denied 130 S.Ct. 2062, 559 U.S. 1037, 176 L.Ed.2d 414. Removal Of Cases 107(10)

District court would not remand to state court student's parents' action alleging school district subjected student to persistent mistreatment in violation of her due process rights and willfully attempted to preclude her from proper classification under IDEA; parents' claims arose out of federal constitution and laws, and their state-law claims for negligence and intentional infliction of emotional distress did not predominate so as to preclude removal. Shea v. Union Free School Dist. of Massapequa, E.D.N.Y.2010, 682 F.Supp.2d 239. **Federal Courts** 2546; **Removal** Of Cases 18; Removal Of Cases 19(1); Removal Of Cases 102

Provision of removal statute, which permitted removal of cases in which separate and independent federal claim was joined with one or more otherwise nonremovable state claims, and stated that **federal court** had authority to "remand all matters in which State law predominates," conferred authority only to remand otherwise non-removable claims, rather than whole case including properly removed claims arising under federal law. Springdale Venture, LLC v. US WorldMeds, LLC, W.D.Ky.2009, 620 F.Supp.2d 810. Removal Of Cases 48.1; Removal Of Cases 101.1

Sole claim under Louisiana wage penalty statute, which had been **removed** to **federal court** on basis of diversity jurisdiction, could not be remanded to state court under subsection of removal statute calling for remand of otherwise nonremovable claims in which state law predominated that had been joined with separate and independent claims removable on basis of federal question jurisdiction. McDowell v. Perkinelmer Las, Inc., M.D.La.2005, 369 F.Supp.2d 839. Removal Of Cases 101.1

It was not appropriate to exercise pendent party jurisdiction over state law claims against defendant, even though action had been **removed** to **federal court** by defendants, where novel questions of state law involved whether private rights of action

were available under Illinois Mental Health and Developmental Disabilities Code and Illinois Nursing Home Care Reform Act; although plaintiffs attempted to adjudicate their claims in state courts, claims against one defendant against whom plaintiffs had no federal causes of action were best suited for resolution in state court. Alber v. Illinois Dept. of Mental Health and Developmental Disabilities, N.D.Ill.1992, 786 F.Supp. 1340. Removal Of Cases 111

---- Entire case, remand, separate and independent claims

Remand was appropriate to state court of plaintiffs' entire case, including Racketeer Influenced and Corrupt Organizations Act (RICO) claim, where state law predominated; RICO claim was so intertwined with and so indistinguishable from state law claims as to be very difficult, if not impossible, to treat separately; moreover, if district court had decided to retain only RICO claim, there would have invariably been race-to-judgment between **federal court** and state court. Holland v. World Omni Leasing, Inc., N.D.Ala.1991, 764 F.Supp. 1442. Removal Of Cases 101.1

Claims under Alabama law for fraud and breach of fiduciary obligation overwhelmingly predominated in action that was removed following amendment of complaint to add "due process" claim, and remand of entire matter was thus warranted in accordance with **Federal Courts** Study Committee Implementation Act of 1990; due process claim was added in anticipation of threatened defense of res judicata and did not appear on face of original, well-pleaded complaint. Martin v. Drummond Coal Co., Inc., N.D.Ala.1991, 756 F.Supp. 524. Removal Of Cases 101.1

---- Dismissal of removable claims, remand, separate and independent claims

Federal court's initial discretionary retention of state law claim which came to it when entire case was **removed** to **federal court** did not become law of the case precluding remand of the state law claim following dismissal of the removable diversity claim. Ondis v. Barrows, C.A.1 (R.I.) 1976, 538 F.2d 904. Courts 99(6)

Federal court has the power to hear claims that would not be independently removable even after the basis for removal jurisdiction is dropped from the proceedings. Watkins v. Grover, C.A.9 (Cal.) 1974, 508 F.2d 920. Removal Of Cases 100

Where federal head of jurisdiction has vanished from case and there has been no substantial commitment of judicial resources to nonfederal claims, it is discretionary with **federal court** to dismiss complaint and remand case to state court. Murphy v. Kodz, C.A.9 (Ariz.) 1965, 351 F.2d 163. Removal Of Cases 100

Following elimination of all federal law claims in removed action, remand of state law claims to state court, rather than retention of supplemental jurisdiction over them, was appropriate, notwithstanding that less than month remained before trial, where court had not expended significant judicial resources on case, in which claims for which no basis existed had been voluntarily dismissed by plaintiff. Adams v. Bank of America, N.A., S.D.Iowa 2004, 317 F.Supp.2d 935. **Federal Courts** 2564; **Removal** Of Cases 101.1

Where court obtained subject matter jurisdiction over state claims when they were removed with federal claims, dismissal of the federal claims did not require remand of the state claims. Gonzales v. City of Mesa, D.Ariz.1991, 779 F.Supp. 1050. **Federal Courts** 2564

Upon granting summary judgment on the sole federal law claim in removed case, so that federal district court no longer had subject matter jurisdiction over remaining state law claims, and where **federal court** had not determined any factual issues central to the remaining claims, case would be remanded to state court. Masdea v. Scholz, D.Mass.1990, 742 F.Supp. 713, 17 U.S.P.Q.2d 1703. Removal Of Cases 101.1

---- Civil rights actions, remand, separate and independent claims

Because physician's state law claims against Georgia Composite State Board of Medical Examiners and various private defendants complained of actions taken by both state and private defendants, Eleventh Amendment precluded district court from deciding those claims, and they would be remanded to state court, as they were separate and independent from federal claims under §§ 1983 and 1985; however, because latter statutes did not apply to state Board, court would retain jurisdiction over claims asserted under those statutes. Brown v. Composite State Bd. of Medical Examiners, M.D.Ga.1997, 960 F.Supp. 301. **Federal Courts** 2384; **Federal Courts** 2393; **Removal** Of Cases 50; Removal Of Cases 101.1

Arrestee's § 1983 and state law action against county and sheriff's deputy, which alleged that unnecessary strip search following arrest while arrestee was pregnant caused her to miscarry, would not be remanded to state court on ground that remand would avoid need for multiple trials; county did not have immunity to § 1983 action under Eleventh Amendment and, thus, all arrestee's state and federal claims could be heard in **federal court** since there was no indication district court would refuse to entertain arrestee's state law claims under court's supplemental jurisdiction. Dugas v. Jefferson County, E.D.Tex.1995, 911 F.Supp. 251. Removal Of Cases 101.1

---- Divorce actions, remand, separate and independent claims

Federal court could sever questions regarding enforceability of Resolution Trust Corporation's (RTC's) first lien on property constituting marital asset from balance of removed divorce proceeding, and remand balance of proceeding to state court. Matter of Stelmach, S.D.Tex.1993, 812 F.Supp. 727. Removal Of Cases 101.1

---- Insurance actions, remand, separate and independent claims

Kentucky statute providing that no "conditions, stipulations or agreements in a contract of insurance shall deprive the courts of this state of jurisdiction of actions against foreign insurers" did not warrant remand to state court of an insured's action against an insurer, claiming that he was wrongfully denied a $1.5 million payment under a disability insurance policy; the statute in no way addressed the jurisdiction of **federal courts** to hear a case arising out of a dispute between a foreign insurance provider and a Kentucky citizen, and even if it had explicitly stated that **federal courts** had no jurisdiction to hear insurance cases arising under Kentucky law, such a provision would have been unenforceable and nonbinding on the court in light of the Supremacy Clause. Daugherty v. Chubb Group of Ins. Companies, W.D.Ky.2011, 823 F.Supp.2d 656. Removal of Cases 102; States 4.1(1)

Employer's third-party claim against health insurer for breach of contract, indemnification, and contribution was not a separate and independent action from employee's original action against employer for breach of contract and fraud, arising out of employer's alleged failure to provide the health insurance coverage it promised, such that it could form basis of removal of action to **federal court**; resolution of the third-party claim was intertwined with employee's original claim. Sanford v. Premier Millwork & Lumber Co., Inc., E.D.Va.2002, 234 F.Supp.2d 569. Removal Of Cases 49.1(4)

---- Labor and employment actions, remand, separate and independent claims

In action by worker, who allegedly contracted malignant mesothelioma from asbestos exposure, against, inter alia, manufacturers, former employer, and premises owners, even if district court had supplemental jurisdiction over worker's claims and employer's third-party indemnification claims against company that allegedly exposed worker to asbestos cargo, based on its federal question jurisdiction over employer's third-party indemnification claims against unions, which were preempted by the LMRA, district court would decline to exercise such jurisdiction, where removal occurred just over two months before scheduled trial in state court, worker chose to litigate in state court and asserted only state law claims, the lone federal claims

were employer's third-party demands against unions, and the unions, as the removing parties, did not oppose severance and remand. Genusa v. Asbestos Corp. Ltd., M.D.La.2014, 18 F.Supp.3d 773. **Federal Courts** 2546; **Federal Courts** 2563

In worker's removed action against his union, alleging state claims and federal claim under the National Labor Relations Act (NLRA) that union breached its duty of fair representation, retention of fair representation claim and remand of state law claims was not warranted under statute governing removal of actions involving a "separate and independent" claim subject to federal-question jurisdiction that was also accompanied by claims that would be non-removable on their own, where the state law claims were subject to at least supplemental jurisdiction, if not complete preemption. Smith v. Local Union No. 110, Intern. Broth. of Elec. Workers, D.Minn.2010, 681 F.Supp.2d 995. **Federal Courts** 2544; **Removal** Of Cases 101.1

Although violation of federally issued temporary restraining order (TRO) did not automatically confer federal question jurisdiction, TRO's close connection with applicable collective bargaining agreement (CBA) did confer such jurisdiction for purposes of determining whether employer's third-party claim against union for intentional interference with business relationships, alleging that union violated terms of TRO and not CBA, was **removable** to **federal court** pursuant to statute permitting removal of the entire case whenever separate and independent claim within court's federal question jurisdiction is joined with one or more otherwise nonremovable claims. Hayduk v. United Parcel Service, Inc., S.D.Fla.1996, 930 F.Supp. 584. Removal Of Cases 56

---- RICO actions, remand, separate and independent claims

In cases removed from state court to **federal court** on basis of RICO claims, **federal court** may always exercise its discretion to retain entire case or remand portions based upon certain factors. Emrich v. Touche Ross & Co., C.A.9 (Cal.) 1988, 846 F.2d 1190. Removal Of Cases 111

---- Tort actions, remand, separate and independent claims

Mineral lessors' fraud and fraudulent concealment claims under Texas law against lessee's petroleum engineer and lessee's land representative were separable and distinguishable from lessors' contract claim against lessee for breach of implied covenant to prevent drainage and, thus, lessors' claims against engineer and land representative were not inseparable and indistinguishable so as to preclude them and render federal district court with diversity of citizenship jurisdiction over action, where engineer and representative were not parties to contract with lessors. Juarez v. Chevron USA, Inc., S.D.Tex.1995, 911 F.Supp. 257. **Federal Courts** 2450; **Removal** Of Cases 36

District court was required to remand negligence claims against nonfederal defendant after federal defendant removed case under authority of Federal Tort Claims Act, even though the pendent party had been included in state court action and plaintiff was not seeking to join nonfederal defendant in **federal court**. Skierski v. I.R.S., E.D.Mich.1990, 748 F.Supp. 499. **Federal Courts** 2902

Miscellaneous considerations, separate and independent claims

Judgment creditor's proceeding registering its multi-million dollar North Carolina state-court judgment in Illinois state court, which was the location of judgment debtor's secured creditor's principal place of business, and serving secured creditor with a citation to discover judgment debtor's assets, was an independent suit, rather than an ancillary or supplementary proceeding to the North Carolina suit, and therefore the proceeding in Illinois state court was **removable** to **federal court**; Illinois state court proceeding involved a new and different party, the secured creditor, as well as an independent controversy, the priority of the secured creditor's lien. GE Betz, Inc. v. Zee Co., Inc., C.A.7 (Ill.) 2013, 718 F.3d 615. Removal of Cases 5; Removal of Cases 49.1(1)

District Court would not exercise supplemental jurisdiction over common law tort claims by student, who allegedly sustained a concussion when fellow student body-checked her from behind in campus dining hall, against fellow student, in her action against fellow student and university, since student's claims against fellow student for intentional or reckless infliction of emotional distress, negligent infliction of emotional distress, battery, and assault arose out of alleged incident, whereas her claims against university for violation of Rehabilitation Act concerned her requests for accommodations that she made after alleged incident. Schaefer v. Yongjie Fu, D.Mass.2018, 322 F.Supp.3d 207. **Federal Courts** 2600; **Federal Courts** 2619

Removal statute did not permit boy scout troop to remove parents' state negligence action, seeking common law remedies for injuries their son sustained in a boating incident while participating in water activities with the troop, based on maritime jurisdiction, absent an independent basis for jurisdiction. J.P. v. Connell, M.D.Fla.2015, 93 F.Supp.3d 1298, appeal after remand from **federal court** 227 So.3d 580. Removal of Cases 19(5)

Fact that lawyer could have alleged multiple publications or several causes of action was irrelevant in determining whether lawyer's libel action against magazine publisher and distributors stated separate and independent cause of action against publisher for purposes of removal of action to **federal court**. Lewis v. Time Inc., E.D.Cal.1979, 83 F.R.D. 455, affirmed 710 F.2d 549. Removal Of Cases 49.1(6)

CIVIL ACTIONS AGAINST FOREIGN STATES

Civil actions against foreign states generally

This section confers original, but not exclusive, jurisdiction on federal district courts in actions involving foreign states; while Congress, in passing the Act, meant to encourage litigants to bring actions involving foreign states in the **federal courts** it also clearly intended that such actions would continue to be brought in state courts. Martropico Compania Naviera S.A. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), S.D.N.Y.1977, 428 F.Supp. 1035. Courts 489(1)

Persons entitled to remove, civil actions against foreign states

State court garnishment action, seeking recovery of $27,175,000 default judgment against Republic of Cuba in favor of wife of Cuban spy, could not be **removed** to **federal court** under Foreign Sovereign Immunities Act (FSIA) by garnishees, which were companies that chartered flights to Cuba and which were allegedly indebted to Cuba, since only a foreign state could remove such an action. Martinez v. Republic of Cuba, S.D.Fla.2010, 708 F.Supp.2d 1298. International Law 532; Removal Of Cases 44

Foreign states within section, civil actions against foreign states--Generally

Bank, a majority of whose shares were owned by Finnish Government Guarantee Fund, was not a "foreign state" under Foreign Sovereign Immunities Act (FSIA), and thus suit against bank employee was not **removable** to **federal court** on ground that employee was a "foreign state." Hyatt Corp. v. Stanton, S.D.N.Y.1996, 945 F.Supp. 675. International Law 425; Removal Of Cases 19(1)

Corporations were not "foreign states" for purposes of removal of action against them to **federal court** where no single foreign state had more than 50% ownership interest in them, even though some of entities which owned corporations were themselves either owned by foreign states or partially owned by foreign states; various foreign government ownership interests could not be pooled together for purposes of determining whether majority of shares or other ownership interest in corporation was owned by foreign state. Linton v. Airbus Industrie, S.D.Tex.1992, 794 F.Supp. 650, on subsequent appeal 30 F.3d 592, rehearing and rehearing en banc denied 36 F.3d 92, certiorari denied 115 S.Ct. 639, 513 U.S. 1044, 130 L.Ed.2d 545. Removal Of Cases 41

---- Agencies or instrumentalities, foreign states within section, civil actions against foreign states

Philippine bank in which Philippine government owned majority interest qualified as "agency or instrumentality of a foreign state" under Foreign Sovereign Immunity Act and thus fell within statute providing that in any state court action against foreign state, foreign state may **remove** proceeding to **federal court**. Chuidian v. Philippine Nat. Bank, C.A.9 (Cal.) 1990, 912 F.2d 1095. Removal Of Cases 44

Tobacco company, organized under laws of Bulgaria with 79.76% of its shares held by Bulgarian government, was "instrumentality of foreign state," which could be sued under commercial activities exception to sovereign immunity under Foreign Sovereign Immunities Act (FSIA), and which could remove cases filed against it in state court to **federal court**. Com. of Va. ex rel. Kilgore v. Bulgartabac Holding Group, E.D.Va.2005, 360 F.Supp.2d 791. International Law 433; Removal Of Cases 41

Lloyd's underwriter on insurance policy established that it was agency or instrumentality of foreign state capable of removing direct action on policy to **federal court**; underwriter provided evidence showing that it was separate legal corporate entity whose majority stockholder was Republic of France; moreover, underwriter was not citizen of United States or any third country and was organized under laws of France with its principal place of business in France. Steward v. Garrett, E.D.La.1996, 935 F.Supp. 849. Removal Of Cases 41

Agency of foreign state which intervened in state court proceeding in which there was otherwise no basis for **federal court** jurisdiction could not **remove** case to **federal court** on assertion that case was one "against a foreign state"; removal of action by foreign agency was improper both because foreign agency voluntarily injected itself into proceedings, and because, although it had intervened nominally as a defendant, its interests were more in nature of those of plaintiff with no power of removal. J. Baxter Brinkman Oil and Gas Corp. v. Thomas, N.D.Tex.1988, 682 F.Supp. 898. Removal Of Cases 38

---- American subsidiaries, foreign states within section, civil actions against foreign states

American-incorporated subsidiary of a French-nationalized corporation could not remove state court action to **federal court**, even though parent corporation had previously removed another related but unjoined action. Laughlin v. Dow Chemical Co., S.D.Tex.1983, 563 F.Supp. 271. Removal Of Cases 27

---- Enlargement of time, time limitations, civil actions against foreign states

Foreign vessel owner could be allowed to **remove** action to **federal court**, even though it did not file notice of removal within 30 days of commencement of lawsuit, where it did file within four months of beginning of lawsuit and no depositions had been taken, no motions argued or ruled upon, and no trial date set. Talbot v. Saipem A.G., S.D.Tex.1993, 835 F.Supp. 352. Removal Of Cases 81

Insurer, which alleged that it was instrumentality of foreign state and which **removed** suit to **federal court** more than three months after suit was filed in state court, timely removed suit under statute allowing foreign state to enlarge time for removal for good cause shown; insurer alleged that removal notice was delayed while it was investigating suit and facts regarding coverage, that it needed time to ascertain whether service of process had been properly perfected on agent designated in its policy, and that delay was needed to investigate status of policy. Tennessee Gas Pipeline Co. v. Continental Cas. Co., M.D.La.1993, 814 F.Supp. 1302. Removal Of Cases 79(1)

---- Parties, pendent jurisdiction, civil actions against foreign states

Court in action against foreign state, Italian helicopter manufacturers, had pendent party jurisdiction over nondiverse defendant. Trump Taj Mahal Associates v. Costruzioni Aeronautiche Giovanni Agusta, S.p.A., D.N.J.1991, 761 F.Supp. 1143, affirmed 958 F.2d 365, certiorari denied 113 S.Ct. 84, 506 U.S. 826, 121 L.Ed.2d 47. **Federal Courts** 2560

---- Dismissal of foreign sovereign, pendent jurisdiction, civil actions against foreign states

Admiralty claim could be retained in **federal court** after case had been removed under Federal Sovereign Immunities Act and foreign sovereign had been dismissed, even though admiralty claim was subject to "savings to suitors" provision under which claimant could have kept case in state court had it involved only admiralty issue from beginning; there had been considerable discovery on admiralty claim, and issue was ripe for adjudication. Williams v. M/V Sonora, C.A.5 (Tex.) 1993, 985 F.2d 808. Removal Of Cases 101.1

Removal to **federal court** of cases involving aircraft accident was appropriate, where one of the defendants, as a foreign state, could properly remove cases and where even if such defendant were to be dismissed it would be appropriate to retain other claims in **federal court** since jurisdiction, either diversity or pendent, would exist for retention of the claims and retention of the claims would promote the efficient use of judicial resources and insure uniformity of results simply by virtue of multidistrict consolidation. In re Disaster at Riyadh Airport, Saudi Arabia, on Aug. 19, 1980, D.C.D.C.1982, 540 F.Supp. 1141. Removal Of Cases 58

Third-party claims, civil actions against foreign states

Provision in Foreign Sovereign Immunity Act (FSIA) permitting removal of civil action filed against foreign state from state court to **federal court** allows foreign third-party defendant, which falls within FSIA's definition of foreign state, to remove entire action from state court to district court, even if there are nonforeign defendants. Davis v. McCourt, C.A.6 (Mich.) 2000, 226 F.3d 506. Removal Of Cases 41

In wrongful death actions in which foreign manufacturer of airplane that crashed was named only as third-party defendant impleaded by defendant airline, manufacturer, which was owned by foreign governments, had authority under Foreign Sovereign Immunities Act (FSIA) to **remove** to **federal court** entire civil action, including underlying action against airline, and was not constrained to removing only third-party action. In re Aircrash Disaster Near Roselawn, Indiana on October 31, 1994, N.D.Ill.1995, 909 F.Supp. 1083, decision affirmed and remanded 96 F.3d 932, rehearing and suggestion for rehearing en banc denied. Removal Of Cases 58

Entity named as third-party defendant in suit qualified as "foreign state" within meaning of Foreign Sovereign Immunities Act (FSIA), thus enabling entity to **remove** suit to **federal court**, in view of exhibits and affidavit showing its status as anonymous society whose stock was completely owned by Venezuela's nationalized oil industry. Lopez del Valle v. Gobierno de la Capital, D.Puerto Rico 1994, 855 F.Supp. 34. Removal Of Cases 41

In light of fact that third-party claim against airline for negligently failing to prevent alleged assault by its employee could have been brought separately from the main state court action for alleged assault and battery, allowing such airline, as a "foreign state," to remove the third-party action to **federal court** would not be an unwarranted extension into independent sphere of state government, but, in order not to unduly extend federal judicial power, all claims outside third-party complaint would be remanded to state court. Alifieris v. American Airlines, Inc., E.D.N.Y.1981, 523 F.Supp. 1189. Removal Of Cases 56; Removal Of Cases 107(8)

Companion cases, civil actions against foreign states

Failure of hotel corporation to remove separate action, which was companion case pending in state court, should not bar "foreign state" defendants, the Commonwealth of the Bahamas and the Ministry of Tourism, from exercising their right to remove state court action to **federal court**, even though hotel corporation asserted it was corporate entity established by Bahamian legislature entitled to invoke defense of sovereign immunity, where corporation's assertion was not inconsistent with government defendants' allegation that corporation remained entity distinct from Bahamian government and other agencies such as the Ministry of Tourism and defendants seeking to remove the second action were not parties to the first. Tucker v. Whitaker Travel, Ltd., E.D.Pa.1985, 620 F.Supp. 578, affirmed 800 F.2d 1140, certiorari denied 107 S.Ct. 578, 479 U.S. 986, 93 L.Ed.2d 581. Removal Of Cases 46

Voluntary dismissal of defendant, civil actions against foreign states

Subsec. (d) of this section giving foreign sovereign the right to remove state court action to **federal court** does not preclude voluntary dismissal of that defendant on notice prior to the filing of an answer. Hinkle's Jeep Sales, Inc. v. Villa Enterprises, Inc., S.D.Fla.1981, 90 F.R.D. 49. Federal Civil Procedure 388

Waiver, civil actions against foreign states--Generally

Foreign state enjoys absolute right of removal of case to **federal court**, absent valid, explicit waiver. Fabe v. Aneco Reinsurance Underwriting Ltd., S.D.Ohio 1991, 784 F.Supp. 448. Removal Of Cases 44

---- Forum selection clauses, waiver, civil actions against foreign states

Choice of forum clause in reinsurance agreement was not waiver of reinsurer's subsequently appointed Bermuda liquidators' right, as instrumentality of foreign state, to **remove** case to **federal court**. Fabe v. Aneco Reinsurance Underwriting Ltd., S.D.Ohio 1991, 784 F.Supp. 448. Removal Of Cases 17

---- Service of process clauses, waiver, civil actions against foreign states

Pursuant to policy's "service of suit" clause, providing, inter alia, that insurer at request of insured would submit to jurisdiction of any court of competent jurisdiction within United States, insurer waived any right to **remove** to **federal court** an insured's action filed against it in state court, even though insurer may have been instrumentality of foreign sovereign covered by Foreign Sovereign Immunities Act (FSIA) and insurer succeeded private insurer that initially subscribed to policy. Tennessee Gas Pipeline Co. v. Continental Cas. Co., M.D.La.1993, 814 F.Supp. 1302. Removal Of Cases 17

Jury trials, civil actions against foreign states

Statute allowing foreign sovereign which is third-party defendant to remove the entire case to **federal court** preserves foreign sovereign's immunity from jury trial while also permitting jury trials against nonforeign state parties. In re Air Crash Disaster Near Roselawn, Ind. on Oct. 31, 1994, C.A.7 (Ill.) 1996, 96 F.3d 932, rehearing and suggestion for rehearing en banc denied. Removal Of Cases 58; Removal Of Cases 59

Footnotes

1 So in original. Section 1407 of this title does not contain a subsec. (j).

28 U.S.C.A. § 1441, 28 USCA § 1441

Current through P.L.118-13. Some statute sections may be more current, see credits for details.

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