

New Law Makes Federal Courts More Accessible

February 27, 2012

A recently enacted federal law makes it easier for litigants, including corporations and insurance providers, to remove their claims from state to federal court, which may result in significant time and cost savings, as well as strategic advantage.

The Federal Courts Jurisdiction and Venue Clarification Act of 2011 (the Act), which went into effect on Jan. 6, 2012, increases access to the federal court system and clarifies several issues with respect to time periods for removal of a state court matter to federal court. The Act also clarifies confusion over the amount in controversy requirements, supplemental jurisdiction of state law claims and venue restrictions.

There are often significant advantages to litigating a lawsuit in federal as opposed to state court. Judges and juries tend to be more conservative in federal court, the federal rules place strict limits on discovery, and federal electronic filing requirements and uniform rules of procedure can increase efficiencies.

Prior to the Act, if a defendant wanted to remove a civil action or proceeding from state court to federal court, notice had to be filed within “30 days after receipt by ‘the defendant’ ... of the initial pleadings.” The federal circuits were split, however, about whether the 30-day period started for all defendants in a multi-party action from the date when the first defendant was served, or whether the 30-day period started for each individual defendant from the date that they were served.

The Act resolved this issue, mandating that each individual defendant now has 30 days from the date they are served to remove the case. Further, where there are multiple defendants, each served at a different time, the earlier-served defendants may join the removal petition filed by a later-served defendant, even if the earlier-served defendants did not file their own petition to remove within 30 days of service.

In addition to clarifying the removal timing confusion, the Act also adopted and codified the old “rule of unanimity.” In short, all defendants must consent to removal from state court.

The Act also made significant changes to how the amount in controversy requirement for purposes of removal is ascertained and proved. Under the Act, if the state court pleadings do not specify the amount in controversy, the defendant(s) may still remove the matter, even after the 30-day removal period expires, but only if discovery subsequently reveals that damages exceed \$75,000. A preponderance of the evidence standard is used in determining whether the amount exceeds \$75,000. A petition for removal must be filed within 30 days from the receipt of the discovery response revealing

NEW LAW MAKES FEDERAL COURTS MORE ACCESSIBLE Cont.

the amount in controversy, but before the one year statute of repose on removal.

Under the old rules, as a matter of strategy, a plaintiff would sometimes join a non-diverse defendant with the intent of later voluntarily dismissing that defendant after one year, therefore, preventing removal. There was no recourse for the diverse defendant who later discovered, after the one-year statute of repose, that the amount in controversy actually exceeded \$75,000. The Act now gives judges limited discretion to allow removal after the one-year repose period, if the judge finds that a plaintiff acted in “bad faith” by deliberately failing to disclose the amount in controversy or by joining a non-diverse defendant simply to destroy diversity.

Further changes include revisions to the removal rules of removal based on federal question jurisdiction where the action contains both removable and non-removable claims. Prior to the Act, district courts had discretion as to whether a non-removable claim would be adjudicated or remanded back to state court. The Act now requires district courts to sever and remand all unrelated state claims that fall outside the scope of its supplemental jurisdiction.

The Act also made important changes to the venue provisions. Under the prior rule, the transfer of an action from one district to another district was limited to districts where the action “might have been brought,” meaning where venue and personal jurisdiction were proper. Now, district courts may transfer any civil action “to any district or division to which all parties have consented” for “the convenience of the parties and witnesses and in the interest of justice.”

Further, corporations and insurance companies with significant foreign operations are now considered citizens of both the state in which they are incorporated and any other state, including any foreign state, where they maintain their principal place of business. This modification appears to be intended to limit diversity jurisdiction by expanding the number of states of which corporations and insurers are considered citizens.

If you have any questions regarding the Federal Courts Jurisdiction and Venue Clarification Act, contact one of the authors of this Rapid Report or any member of Plunkett Cooney’s Litigation Practice Group.

For a complete copy of the Federal Courts Jurisdiction and Venue Clarification Act of 2011, [click here](#).

Rapid Reports are distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to Robert A. Marzano or any other members of the practice group. The brevity of this update prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2012. All rights reserved PLUNKETT COONEY, P. C.