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## **Update on Removal, Diversity Jurisdiction, and Improper Joinder**

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\* All opinions and commentary expressed herein are solely those of the author.

# Update on Removal, Diversity Jurisdiction and Improper Joinder

## **Introduction**

This paper will discuss recent case law addressing certain topics of interest regarding removal, diversity jurisdiction, and improper joinder, prefaced by a general overview and background of the interplay among those doctrines.

## **Federal Jurisdiction**

The United States district courts are courts of limited jurisdiction; the United States Constitution allows for federal jurisdiction only in those cases involving a federal question or where there is diversity of citizenship. *Scarlott v. Nissan N. Am., Inc.*, 771 F.3d 883 (5th Cir. 2014).<sup>1</sup> Early interpretations of these jurisdictional restrictions reflects the historical and political context in which they were made: “The constitution has conferred on the courts of the United States jurisdiction in two classes of cases. 1. Where the peace of the confederacy might be involved. 2. Where the state tribunals could not be supposed to be impartial.” *Bank of the United States v. Deveaux*, 5 Cranch 61, 3 L.Ed. 38 (1809).<sup>2</sup>

The *Deveaux* opinion, issued only twenty years after the adoption of the Constitution and not too far removed from the Revolutionary War itself, further expounds on these classifications in stating that the first addressed situations where “the union was answerable for the misconduct of its members, who, by unjust decisions against aliens, might furnish a just ground of war” and the second was intended to “preserve the real equality of citizens throughout the union, by guarding against fraudulent laws and local prejudices, in particular states.” *Id.*

## **Removal and Diversity Jurisdiction**

### *Statutory Authority – Removal based on Diversity Jurisdiction*

Removal of cases from state court to federal court is governed by federal statute, which specifically addresses removal based on diversity of citizenship. 28 U.S.C. § 1441(b).<sup>3</sup> Diversity jurisdiction exists

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<sup>1</sup> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. U.S.C.A. Const. Art. III § 2, cl. 1.

<sup>2</sup> In delivering the opinion of the court, Chief Justice John Marshall stated: “However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the Constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different States.”

<sup>3</sup> 28 U.S.C.A. § 1441 provides, in pertinent part:  
§ 1441. Removal of civil actions

(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.

where there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332; See *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005).<sup>4</sup>

### *Diversity Requirements*

The determination of whether diversity jurisdiction exists is based on the claims alleged in the state court petition as of the date of removal. *Campbell v. Stone Ins., Inc.*, 509 F.3d 665 (5<sup>th</sup> Cir. 2007). Complete diversity is required; no plaintiff can be a citizen of the same state as any defendant. See *Vaillancourt v. PNC Bank Nat'l Ass'n*, 771 F.3d 843 (5<sup>th</sup> Cir. 2014).<sup>5</sup> Additionally, removal is appropriate only if none of the parties properly joined and served as defendants is a citizen of the state in which the action was brought. 28 U.S.C. § 1442(b) (2); *Crockett v. R.J. Reynolds Tobacco Co.*, 436 F.3d 529, cert. denied, 548 U.S. 907 (2006).

### *Removal Timelines*

The deadlines for removing civil cases are governed by 28 U.S.C. § 1446(b), which provides that a notice of removal shall be filed within thirty days after the receipt by the defendant of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.<sup>6</sup>

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(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.

<sup>4</sup> 28 U.S.C.A. § 1332 states, in pertinent part:

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

<sup>5</sup> The Constitution does not specifically mandate complete diversity, but the Supreme Court declined to recognize any jurisdictional threshold that included the concept of "minimal diversity" (i.e. requiring that only one plaintiff be a citizen of a different state than at least one defendant). See *Strawbridge v. Curtiss*, 7 U.S.267 (1806) (court held, citing the Judiciary Act of 1789, that federal courts have jurisdiction only where the suit is between a citizen of where the suit is brought and a citizen of another state).

<sup>6</sup> § 1446. Procedure for removal of civil actions

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

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

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

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

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