PENNSYLVANIA CIVIL RULE AMENDMENT AFFECTS "SNAP" REMOVAL TO FEDERAL COURT

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Defendants seeking to remove cases from Pennsylvania state courts to federal courts using “snap” removal will have to file their removal papers more quickly as a result of an amendment to Pennsylvania's service rules that will take effect in April 2022.

BACKGROUND

Section 1441(a) of Title 28 of the United States Code allows a defendant to remove a case from state court to federal court if the federal court could have originally exercised subject-matter jurisdiction. But there is an exception: in a case to be removed based on diversity jurisdiction, there can be no removal if any of the defendants is a “forum defendant,” meaning it is a citizen of the state in which the federal court sits.

Some courts have allowed defendants to avoid this “forum-defendant” rule through what has been called “snap” or “pre-service” removal. The practice is based on the text of Section 1441, which provides that there can be no removal “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.” 28 U.S.C. § 1441(b). The courts that allow “snap” or “pre-service” removal focus on the language that says there can be no removal if any defendant “properly ... served” is a forum defendant and conclude that, if the forum defendant has not yet been served, removal may be appropriate. In Encompass Ins. Co. v. Stone Mansion Rest., Inc., 902 F.3d 147 (3d Cir. 2018), the Third Circuit held that such “snap” removals were allowable given the text of the statute. The Second and Fifth Circuits have agreed, and district courts in other circuits are split.

The Encompass decision has been particularly important in Pennsylvania because, in most counties, plaintiffs suing for damages in Pennsylvania state courts must have the sheriff serve process for them to initiate their suits. Service by the sheriff is generally slower than service by other means, and that has made “snap” removal easier to achieve since the defendant is more likely to know about the suit before it is served.

AMENDED PENNSYLVANIA SERVICE RULE

The service-by-sheriff time lag that can make “snap” removal easier will soon disappear. On 18 January 2022, the Pennsylvania Supreme Court amended Pennsylvania Rule of Civil Procedure 400, one of the rules governing service of process. That rule sets out the requirement for service by the sheriff, but it also lists exceptions for when any “competent adult” may make service. The recent amendment to Rule 400 adds to the list of exceptions the following: “a civil action in which there is a complete diversity of citizenship between all plaintiffs and all defendants, and at least one defendant is a citizen of Pennsylvania.” In other words, in any case in which “snap”

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removal might be possible, the plaintiff need no longer effect service through the sheriff but can do so much more quickly by sending any adult to deliver process to the in-state defendant.

For defendants who still wish to try for “snap” removal, the amendment to Rule 400, which takes effect 1 April 2022, means they will have to act even more quickly to get their removal papers filed.

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