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The State of Snap Removal in Illinois District Courts

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United States District Courts sitting across Illinois' three federal districts generally allow the litigation practice known as "snap removal." Snap removal is a tactic by which the plain language of the removal statute has been construed by many courts to permit a federal forum when the parties to an action would ordinarily not be permitted to remove the action to federal court. This article aims to summarize this practice and its use across the Southern, Central, and Northern Districts as a reference for Illinois' state and federal court litigators.

Background: The Statues

28 U.S.C. § 1332(a)(1) grants federal district courts jurisdiction over civil actions between citizens of difference states which exceed the statute's amount in controversy requirements. When the statute's requirements are met, defendants may remove cases originally filed in state court to the court of the federal district encompassing the state court. See 28 U.S.C. § 1441(a).

Enter the "Forum Defendant Rule," known by some as the "(b)-bar:" Section 1441(b)(2) prohibits removal of diversity actions "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." Because diversity jurisdiction is generally thought to allow filing plaintiffs reprieve from the potential bias of suing a defendant in the state court of the defendant's citizenship,[1] the Forum Defendant Rule operates in reverse and prohibits such a defendant from removing in

[1] *See Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 54 (1954) (Frankfurter, J., concurring) (explaining diversity jurisdiction "based on the desire of the Framers to assure out-of-state litigants courts free from susceptibility to potential local bias.").

instances where a filing plaintiff willfully gives the defendant that "home field advantage."[2] This rule puts out-of-state co-defendants of an in-state defendant at a disadvantage by negating the co-defendants' ability to remove the case based on the presence of one in-state defendant. As a result, some creativity was employed in developing the Snap Removal Doctrine.

Snap Removal occurs when a defendant removes a case that would otherwise be stuck in state court because of the Forum Defendant Rule after the case has been filed but *before* a forum state defendant has been *served*. In those cases, according to the doctrine, removal is allowed because no "parties in interest *properly* joined *and served* as defendants" prevent removal under section 1441(b)(2). The Seventh Circuit has not ruled on the approach, but most district court judges in Illinois will deny motions to remand, instead upholding application of the Snap Removal Doctrine.

The Southern District

In Benton and East St. Louis, the Snap Removal Doctrine is alive and well. In 2021, the Southern District denied a motion to remand, accepting removal based on the Snap Removal Doctrine. In a state law declaratory judgment action, international insurer Zurich removed the case on diversity grounds a day before the Clerk of the St. Clair County Circuit Court issued a summons to Zurich.[3] Even though Zurich American is a citizen of Illinois, because its removal was filed before it had been "properly joined and served as defendant[ ]" its removal complied with the letter of Section 1441. The court agreed in applying the Snap Removal Doctrine with "four Circuit Courts of Appeal, the majority of district courts in [the Seventh Circuit], as well as courts in this judicial district" and noted its need to apply the plain language of the clear and unambiguous statute.

The Central District

The judges in Peoria, Urbana, Springfield, and Rock Island agree that the Forum Defendant Rule does not prohibit removal when a forum defendant has not been served. In an interesting 2003 environmental case, an out-of-state defendant filed a notice of removal after

[2] *See Lively v. Wild Oats Mkts., Inc.*, 456 F.3d 933, 940 (9th Cir. 2006) ("[I]n cases where the defendant is a citizen of the state in which the case is brought, … the forum defendant rule allows the plaintiff to regain some control over forum selection ….").
[3] *Knightsbridge Mgmt., Inc. v. Zurich American Ins. Co.*, 518 F. Supp. 3d 1248 (S.D. Ill. 2021).

written discovery revealed that the forum defendant that had been served was not the correct company but a sole proprietor doing business under a similar name.[4] The court recognized that "[o]nce the other Defendants learned that [the purported forum defendant] has not been properly served, the action became removable because there was no citizen of Illinois who had been properly served."

The Northern District

The judges of the Chicago and Rockford federal courthouses, on the other hand, are not in complete agreement when it comes to Snap Removal. The doctrine has been applied and rejected by disagreeing judges. In 2018, Judge Dow denied remand, allowing removal where a forum defendant filed for removal in a products liability case after a summons was issued but before it had been served.[5] Considering both the "purpose" of the statute, which seems to weigh against the doctrine, and the plain language of the statute, which requires service to prevent removal, the court found that "the statutory text must control."

Judge Dow's colleague in Chicago, Judge Kennelly, took the opposite approach in a case involving the same Illinois defendant.[6] The in-state defendants filed for removal the day that suit was filed against them and three out-of-state defendants. But Judge Kennelly noted that instantaneous service is impossible, especially given Illinois's general requirement of service by the sheriff's office.[7] Recognizing that deviation from a statute's plain meaning may be necessary to avoid absurd results,[8] the court found that application of the Forum Defendant Rule as urged "would result in the elimination of the forum-defendant rule in Illinois, at least for a vigilant defendant" and granted the motion for remand.

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[4] *Test Drilling Service Co. v. Hanor Co., Inc.*, 322 F. Supp. 2d 953 (C.D. Ill. 2003).
[5] *D.C. ex rel. Cheatham v. Abbot Labs., Inc.*, 323 F. Supp. 3d 991 (N.D. Ill. 2018). Note that some judges, take a different view depending on the presence of forum and non-forum defendants. *See*, *e.g.*, *Graff v. Leslie Hindman Auctioneers, Inc.*, 299 F. Supp. 3d 928, 937 n.7 (N.D. Ill. 2017) ("This was not the docket-monitoring, jack rabbit or snap removal that other courts have found to violate the spirit of the law.").
[6] *Estep v. Pharmacia & Upjohn Co., Inc.*, 67 F. Supp. 3d 952 (N.D. Ill. 2014).
[7] *See* 735 ILCS 5/2-202(a).
[8] *Jefferson v. United States*, 546 F.3d 477, 483 (7th Cir. 2008).

Representing Illinois Defendants

Illinois attorneys whose in-state clients will foreseeably be hailed into state court by out-of-state plaintiffs should keep up to date on district court decisions interpreting the Forum Defendant Rule and applying or rejecting the Snap Removal Doctrine. The Snap Removal Doctrine is no longer a novel litigation device, and published opinions agreeing or declining to apply the doctrine are readily available for many judges. So, clients will increasingly expect sophisticated counsel to know the doctrine's likelihood of success in front of familiar judges.

Not only will attorneys continue to be expected to analyze new cases for application of the Snap Removal Doctrine, but, once a federal judge is assigned to removed cases, attorneys will also increasingly be expected to assess the odds of success should a plaintiff move for remand. In an environment where defense counsel can quickly gauge a judge's attitude toward the Snap Removal Doctrine, clients will expect an aggressive approach in front of judges friendly to the doctrine and conservative, cost-effective approaches in front of judges unlikely to apply the doctrine and inclined to order remand.