

## 28 U.S.C. 1441 Removal of Cases From State Courts

(a) This section provides that any civil action brought in the state court of which the district courts have original jurisdiction, may be removed by the defendant or the defendants to the district court for the district and division embracing the place where such action is pending. For instance, a civil action removed from a circuit court of Hillsborough must be, under this section, removed to the Tampa Division of the Middle District. As you will see later on, in the case of bankruptcy, the removal is directly to the bankruptcy court, although, this appears to be contrary to the provision of the statute. In a case of *Jim Walter Homes* an attorney in Texas filed a civil action in the state court for the county. The defendant removed the action to the district court in Dallas. The district court in Dallas transferred the removed case to the bankruptcy judge in Dallas. The bankruptcy judge in Dallas removed, or sent the case to the District Court for the Middle District of Florida. After four months of travel, the case ended up before me, where it should have been sent to begin with. In this connection it should be noted, however, that as a general practice, removed cases are removed directly to the bankruptcy court and not the district court. The key provision of this

section is that the action must be in which the district court would have original jurisdiction.

(b) This subsection provides that any action based on the Federal Constitution, a treaty, or federal statute, is removable regardless of the citizenship of the parties, which ordinarily is a condition for civil action jurisdiction.

(c) Provides that whenever a separate and independent claim or cause of action is joined with one or more otherwise non-removable actions, the entire case may be removed, but the court in its discretion may remand all matters in which the state law predominates.

(d). Any civil action brought in a State court against a foreign state may be removed by the foreign state to the district court.

#### **28 U.S.C. 1445 Nonremovable Actions**

(a) A civil action in any state court against a railroad, or its receivers or trustees, may not be removed to a district court.

(b) A civil action in any state court against a carrier, or its receivers or trustees, to recover damages for delay, loss, or injury to shipment, may not be removed to a district court, unless the matter in controversy is in excess of \$10,000.

(c) A civil action in any State court arising under workmen's compensation laws of the State may not be removed.

(d) A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed.

**28 U.S.C.1452 Removal of Claims Related to Bankruptcy Cases**

(a). A party may remove any claim or cause of action in a civil action other than a proceeding before the U.S. Tax Court, or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, if the civil action is such, where jurisdiction is established by 28 U.S.C. 1334, it is removable from the State court to the bankruptcy court.

(b) A court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable grounds. An order granting or denying removal is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 under 28 U.S.C., or by the Supreme Court of the United States, under section 1254.

**Decision By Circuits:**

**Second Circuit- *In re Methyl Tertiary Butyl Ether*, 488 F.3d 112**, the court held that a State court actions commenced by the states alleging

that the defendants contaminated public drinking water supplies were actions to enforce police, or regulatory powers, and therefore, not found to be removable, even though a defendant is a bankruptcy debtor.

*California Public Employees' Retirement System v. WorldCom, Inc.*, 368 F.3d 86- a conflict between 22(a) of the Securities Act of 1933, which prohibits a removal of individual security actions, and 28 U.S.C. 1452(a) and 1334(b), which permits the removal of actions related to a bankruptcy case, was resolved in favor of the bankruptcy removal.

Sixth Circuit- *Easley v. Pettibone Michigan Corp.*, 990 F.2d 905 (1993), an action filed against the debtor postpetition in violation of the automatic stay cannot be removed even by the debtor, until the stay is lifted.

Tenth Circuit- *Daleske v. Fairfield Communications*, 17 F.3d 321 (10<sup>th</sup> Cir. 1994)- cost, expenses, attorney fees, may be assessed in the remand order based on improper removal of the case.

U.S. Supreme Court *Things Remembered Inc. v. Petrarca* 516 U.S. 124- an action to remand a case that was removed to a bankruptcy court, prohibited to appeal to the court of appeals, of the remand order.

Second Circuit- *Covanta Onondaga Ltd. v. Onondaga County Resource Recovery Agency*, 318 F.3d 392 – after a remand from a state court

action, the district court lacked jurisdiction and could not issue an injunction against the debtor prohibiting to proceed in the bankruptcy court.

**Removal Procedure in the Bankruptcy Court F.R.B.P. 9027**

**(a) Notice of Removal.**

**(1) Where to File; Form and Content.** The notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where a civil action is pending. The notice shall be signed, according to rule 9011, and must contain a short and plain statement of facts which entitle a party filing a notice to remove, contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of a final order or judgment by the bankruptcy judge. The notice shall be accompanied with a copy of all processes and pleadings.

**(2) Time for filing.** If a claim or cause of action in a civil action is pending when a case under the Code is commenced, the notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action

has been stayed by section 362 of the Code, or (C) 30 days after a trustee qualifies in a Chapter 11 case, but not later than 180 days after the order for relief.

**(3) Time for Filing; Civil Action Initiated After Commencement of the Bankruptcy Case.** If a claim or a cause of action is asserted in another court after the commencement of a bankruptcy case, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause action sought to be removed or (B) 30 days after receipt of a summons if the initial pleading has been filed with the court but not served with the summons.

**(c) Filing in a Non-Bankruptcy Court.** Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which a claim or cause of action is removed. Upon filing that notice, the removal is effective and parties shall proceed no further in that court unless, and until, the action is remanded.

**(e) Procedure After Removal.**

**(1) After removal of a claim or cause of action, a bankruptcy judge may issue all necessary orders and process to bring before it all**

**proper parties whether served by process issued by the court from which the claim or cause of action is removed or otherwise.**

**(2) The bankruptcy judge may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.**

**(3) Any party who files a pleading in connection with a removed claim or cause of action, other than the party filing a notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges the proceeding is a non-core, it shall state the party does not consent to entry of a final orders or judgment by the bankruptcy judge. Any party who files such statement, shall mail a copy to every other party to the removed claim or cause of action.**

**(f) Process After Removal. If one or more defendants of the removed action has not been served with process, the service may be completed, or new process shall be issued pursuant to Part VII of the rules.**

**(g) Applicability of Part VII. The rules governing adversary proceedings, Part VII, shall govern the removed action. In a removed**

**action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 20 days following the receipt through service or otherwise of a copy of the initial pleading.**

**(h) Records Supplied.** When a party is entitled to a copies of the records and proceedings in any civil action or proceedings in a federal or state court, to be used in the removed action, the clerk of the federal or state court, on demand accompanied by payment or tender of lawful fees, fails to deliver certified copies, the court may order such by affidavit or otherwise.

**(i) Attachment or Sequestration; Securities.** When a claim or cause of action is removed, any attachment or sequestration of property in the court from which the claim was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim was removed.

### **Proceeding to Remand**

**A party of interest to the removed action may seek an order to remand the action back to the state courts where it was initially filed. This is a motion practice governed by F.R.B.P 9014. It is treated as a contested**

**matter, not as an adversary proceeding. As noted earlier, an order granting or denying a motion to remand, is not reviewable by appeal or otherwise by the court of appeals. That would not prevent the district court to consider on appeal an order by the bankruptcy court granting or denying the motion.**