

Ninth Circuit Gives Defendants Additional Option To Move Case From State To Federal Court

On June 27, 2013, the Ninth Circuit Court of Appeals announced a rule that may make litigating in federal court easier for parties that were initially sued in state court.

Attorneys (as well as readers of this newsletter) who have cases pending in California state court will no doubt be aware of the long delays that have become the norm in state court as a result of budget cuts and restructuring of the judiciary. Here in Los Angeles, more than 500 court employees have lost their jobs in June alone, bringing the total of court positions that been eliminated since 2008 to 1,398. Additionally, eight courthouses have closed their doors this year in Los Angeles County.

The elimination of court positions and court closures has resulted in cases being reassigned and new trial dates set, sometimes almost a year after the initial trial date. One strategy to mitigate the effects of these delays is to file lawsuits in federal court or have the case removed from state court to federal court.

Generally, a defendant who is sued in state court has the option to remove the case to federal court where the case involves a question of federal law or the defendants and plaintiffs are citizens of two different states. In this situation, defendants must act quickly-notice of removal must be filed within 30 days after the defendant receives the initial pleading or within 30 days of receiving a copy of an amended pleading, motion or other paper from which it can be determined that there are grounds for removal. 28 U.S.C. Section 1446(b)(1) and (b)(3). In essence, defendants have two bites at the apple: once when they are served with an initial complaint and again if the plaintiff amends the complaint or serves some other paper so that federal jurisdiction becomes apparent.

The Ninth Circuit's new rule will give defendants a third chance in which to have their cases heard in federal court after they are sued in state court. *Roth et al. v. CHA Hollywood Med. Center, L.P. et al.* (No. 13-55771), was a wage and hour class action lawsuit filed against CHA Hollywood Medical Center. A link to the full Ninth Circuit opinion can be found here - <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/06/27/13-55771.pdf>.

After the plaintiffs filed their initial complaint on April 27, 2011 and then filed a first amended complaint on May 24, 2012, defendants filed a notice of removal on September 4, 2012. Defendants alleged that the federal courts could hear their case because after conducting their own investigations into the case, they discovered that one of the plaintiffs was a citizen of Nevada and the amount in controversy was over \$5 million.

Under the Class Action Fairness Act (CAFA), federal court jurisdiction exists if the amount in controversy exceeds \$5 million and one member of the plaintiff class is a citizen of a different state from any defendant. 28 U.S.C. Section 1332(d)(2)(A). The Ninth Circuit held, that in this situation, defendants could remove their case to federal court because diversity jurisdiction existed under CAFA and the thirty day time limits under 28 U.S.C. Section 1446(b)(1) and (b)(3) had not been triggered.

Roth gives defendants the power to remove their cases to federal court rather than waiting for plaintiffs to file court papers that permit them to remove their cases to federal court under 28 U.S.C. Section 1446(b)(1) and (b)(3). Post-Roth plaintiffs may no longer be able to conceal facts that give defendants the option of removal. On the contrary, as the Ninth Circuit intimated, plaintiffs may now want to allege in their initial pleadings or other subsequent pleading, facts raising the issue of federal jurisdiction so that the clock begins to run in order to force defendants to act quickly if they want to remove the litigation to federal court.

Whether to have a case heard in state court or federal court is fundamentally a question of strategy taking into considerations many factors, such as the causes of actions alleged, the identity of the parties, the possible pool of jurors and ultimate business goals of the parties. Given the delays in state courts here in California, the Roth decision should be welcome by businesses that are sued in state court because it gives them an option to litigate in a potentially more favorable venue.

If you have any questions or comments, I would be delighted to hear from you.

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