



"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 3:27

Greetings from Doug Fletcher

Greetings from Dallas! Well, our traditional Texas hot weather is beginning to disappear and we actually opened the windows in my house the other day. October is always a beautiful month in Texas and, like most of you, it signals the advancing months and ultimately the end of the year. I can say that I will be happy to see 2020 disappear, although this month is going to be full of surprises. We are seeing the start of collegiate football and even with half-filled stands, it is still fun. We will watch the first virtual World Series with a half-filled stadium. I am wondering how kids will do trick-or-treating this year, wearing masks in addition to their costumes, and I would love to know how we do virtual trick-or-treating! Maybe just buy a bunch of candy and hide it around the house? We are also in the middle of a great national election which, again, has been significantly affected by Covid-19. For our friends in the northeast, I hope you are at least getting out and driving around to see some beautiful foliage. Here in Texas it appears that jury trials will probably not begin until after the first of the year, although there are some federal courts that are attempting to conduct live jury trials. Personally, I am tired of taking Zoom depositions and our firm will not be involved in any Zoom trials. In the meantime, everyone stay safe and be sure to let us know if we can help you with any legal matters in the State of Texas. Try not to eat too much of your kids' Halloween candy!



Snap Removal: The Importance of Early Assessment of Removal from State to Federal Court

Jeff Smith

One of the first steps in evaluating a new suit filed in state court is to



Missed our Webinar on Understanding Statutes of Limitations on Insurance Claims?

Back by popular demand, if you were unable to attend the August presentation of Understanding Statutes of Limitations on Insurance Claims by [Kristi Kautz](#) and [Jeff Smith](#), we have heard you and will present this topic again on Wednesday, October 28th at 12:00PM.

This webinar addresses the statutes of limitations that apply to claimants' claims and time limits for filing lawsuits including changes due to COVID-19.

This webinar is approved for 1.0 general credit hour by the Texas Department of Insurance. If you took the class previously, you cannot receive credit again.

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Lawyers**

evaluate whether the case can and should be removed to federal court. Oftentimes, removal to federal court is more advantageous for the defense as federal courts tend to be more willing to consider dispositive motions and it broadens the jury pool in more Plaintiff-friendly state courts.



Generally, under 28 U.S.C. § 1332(a), federal courts have original jurisdiction over all suits where the matter in controversy exceeds \$75,000.00, exclusive of interest and cost, and the dispute is between citizens of different states. This is known as diversity jurisdiction. However, the Forum-Defendant rule prevents removal when any of the defendants is a citizen of the state in which the suit is brought. Specifically, under 28 U.S.C. § 1441(b)(2):

"(2) a civil action otherwise removable solely on the basis of the jurisdiction under [28 U.S.C. § 1332(a)] 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. *Emphasis added.*"

The question has arisen as to whether a case may be removed to federal court before a properly joined defendant that would otherwise defeat removal has been served. This attempt at removal has become known as "snap removal." The Fifth Circuit Court of Appeals, which covers Texas, Louisiana, and Mississippi, recently addressed this question in *Texas Brine Company, L.L.C. v. American Arbitration Assoc.*, 955 F.3d 482 (5th Cir. Apr. 7, 2020). In this case, the American Arbitration Association ("AAA") removed the case prior to service of the suit on the two in-state defendants, which would have otherwise defeated removal. *Id.* The question for the Court was whether the Forum-Defendant rule prohibited the AAA from removing a case when the not-yet-served defendants are citizens of the forum state. In upholding the AAA's "snap removal," the court looked at the plain language of the statute. Had the in-state defendants been joined **and served** at the time of the AAA's removal, the case would not have been removable to federal court. However, because the in-state defendants had not yet been served, the Court upheld the AAA's removal. As stated by the Court, "[a] non-forum defendant may remove an otherwise removable case even when a named defendant who has yet to be '**properly joined and served**' is a citizen of the forum state." *Id.* at 487 (emphasis added).

The Court's decision and affirmation of 'snap removals' opens the door for removal of more cases that might not otherwise be removable. As such, it is important to evaluate the potential for removal from state to federal court as early as possible. If an in-state co-defendant that would otherwise defeat removal has not been served, a case can be removed to federal court so long as removal is accomplished prior to the in-state

Welcome Karen Kennedy



We welcome [Karen Kennedy](#) to the firm's Dallas office. Her drive and focus along with her knowledge of catastrophic personal injury and product defect litigation has helped her attain excellent results in transportation accidents, product defect claims, and personal injury and wrongful death claims.

Welcome Kevin Niknam



We welcome [Kevin Niknam](#) to our Austin office. He is skilled in all aspects of civil litigation with a focus on commercial litigation, products liability, premises liability and personal injury defense.



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25th of October

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defendant being served. Accordingly, we recommend evaluating the venue and potential for removal as early as possible to utilize 'snap removal' if appropriate. Should you have any questions, we are here to assist and thankful for the ability to continue to serve and meet your needs.

Conflicts Resolved

Fletcher Farley Obtains Summary Judgment

[David Solomon](#) and [Joanna Salinas](#) of the Austin office secured summary judgment for an Austin daycare center that was accused of violating its own internal policies and procedures when releasing a child in their care to someone who was not specifically identified as authorized to pick up the child when the father signed up the child for care. The child was released to her mother. The Court agreed that a Texas state law that authorized release of a child to her parents unless there was a court order dictating otherwise controlled and that the father's instructions and the daycare's internal policies did not create any legal duty that was breached by the center. All causes of action against the daycare center and its manager were dismissed with prejudice.

If you want more information or have questions, please contact:

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