

Removing All Doubt: The First Circuit Clarifies the Conditions Triggering the 30-Day Removal Window When the Earlier, Initial Pleading Does Not Disclose Grounds for Removal

Article By:

John M. Landry

In *Romulus v. CVS Pharmacy, Inc.*, No. 14-1937, 2014 U.S. App. LEXIS 20548 (1st Cir. Oct. 24, 2014), the First Circuit Court of Appeals clarified the conditions triggering a defendant's 30-day window to remove a case to federal court under the [Class Action Fairness Act](#), 28 U.S.C. § 1332, when the earlier, initial pleading did not disclose a basis for CAFA removal. The First Circuit, in a case of first impression in the circuit, held that this 30-day window begins only when a plaintiff's "amended pleading, motion . . . or other paper" provides either a clear statement that the damages sought exceed \$5 million or information sufficient to allow a defendant to calculate an amount-in-controversy exceeding \$5 million.

Plaintiffs brought a putative class action in state court alleging defendant CVS Pharmacy, Inc. maintained a policy requiring shift supervisors in certain instances to take on-premises meal breaks without pay. The complaint, served in 2011, sought to recover alleged unpaid wages but did not identify the number of breaks at issue or the amount of damages. CVS timely removed the action within 30 days under [28 U.S.C. § 1446\(b\)\(1\)](#), which governs removal based on receipt of the initial complaint. In opposing remand, CVS estimated damages in excess of \$5 million by assuming the alleged policy affected all supervisors and shifts. But the district court found this assumption at odds with the complaint and remanded the action to state court.

Back in state court, CVS produced time and attendance data. Plaintiffs analyzed this data and purported to estimate the number of breaks at issue, advising CVS of this number by email on January 18, 2013. CVS extrapolated from this number damages exceeding \$5 million and again removed the action. In opposing remand, CVS invoked 28 U.S.C. § 1446(b)(3), which authorizes removal "within 30-days after receipt by the defendant . . . of a copy of an amended pleading, motion . . . or other paper from which [removal] may first be ascertained." CVS argued that it had removed the action within 30 days from receipt of "other paper"—the January 18 email.

The district court disagreed and remanded again because more than 30 days had elapsed since plaintiffs' service of the initial complaint and CVS identified no subsequent "paper" from which it had first ascertained removability. The number of breaks identified in the January 18 email came from CVS's own data, which CVS possessed since the initiation of the litigation and had itself provided to plaintiffs. Hence, according to the district court, the email contained no "new" data that would allow it

to serve as the trigger for Section 1446(b)(3)'s removal window. The district court also found CVS had violated a duty to make a reasonable inquiry into its own records at the time of the initial complaint. CVS successfully sought interlocutory review.

The First Circuit ruled that Section 1446(b)(3) removal is available only when removability is not clear from the face of the initial pleading. It held that, in such instance, Section 1446(b)(3)'s 30-day removal period does not start until removability can first be ascertained from a later "amended pleading, motion . . . or other paper," whether or not the defendant is the source of the data contained in the "paper." Only a plaintiff's "paper" can trigger Section 1446(b)(3)'s removal clock. By this holding, the First Circuit adopted what is known as the "bright-line" test, thereby joining the other circuits—the Second, Seventh, and Ninth Circuits—that have addressed the issue. And the First Circuit specifically adopted the Second Circuit's version of the test: To start the 30-day clock, a plaintiff's "paper" must either clearly state the amount of damages sought or contain sufficient data from which such amount can be determined by a simple calculation.

Broadly construing the term "paper" to include informal correspondence, the First Circuit applied its newly adopted "bright-line" test to the January 18 email. It determined that this email message enabled CVS, using a simple calculation, to ascertain damages in excess of \$5 million from plaintiffs' own "paper" for the first time and that CVS therefore timely removed the action under Section 1446(b)(3).

The First Circuit's opinion maintains uniformity among the U.S. Courts of Appeals that have addressed the conditions that trigger Section 1446(b)(3)'s 30-day window. Requiring district courts to focus exclusively on a plaintiff's "papers" keeps the timeliness inquiry streamlined while aiding those defendants seeking another removal opportunity in instances when the initial pleading is not removable on its face.

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume IV, Number 321

Source URL: <https://natlawreview.com/article/removing-all-doubt-first-circuit-clarifies-conditions-triggering-30-day-removal>