

## PRACTICE TIPS

### *Second Circuit Adopts “Bright Line” Test for Determining Removability*

Transportation practitioners are frequently charged with assessing whether a case may be removed from a “trucker-unfriendly forum” to the safe-haven of federal court. Removal of a suit from state to federal court requires that the amount in controversy exceed the \$75,000.00 jurisdictional amount in addition to the presence of diversity of citizenship.

In states where the procedure or custom is that the complaint does not specify an amount of damages being sought (like Idaho, except above a lesser state court jurisdictional requirement), does the mere allegation of serious injuries provide a defendant with enough information to trigger the 30-day clock for removal of the suit from state court? Must a defendant guess that the allegation of serious injuries is sufficient to value the case above \$75,000.00 and therefore hurry to remove the case, or can a defendant wait until the amount is specified by plaintiff in some post-complaint writing?

28 U.S.C. § 1446(b) actually contemplates an initial pleading that fails to provide sufficient information that the case is removable. It provides a 30-day clock from defendant’s receipt of a paper from which it may first be ascertained that the case is one which is or has become

removable. However, some district courts in various circuits have nevertheless required defendants to discern from the allegations that the damages sought exceed the jurisdictional amount.

In *Moltner v. Starbucks Coffee Co.*, 624 F.3d 34 (2d Cir.2010), the Second Circuit adopted a “bright line” rule and rejected a “guesswork” standard. Joining the Eighth Circuit, the Second Circuit starts the 30-day removal clock ticking upon defendant’s receipt of a definitive writing. In Idaho state courts, defendants can use written discovery to request, within 30 days, the plaintiff’s statement of the total damages. In other circuits, perhaps *Moltner* could now be used to spearhead similar arguments for a bright line rule.



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