

An airline incorporated and with its principal place of business in State A contracted with a manufacturer incorporated and headquartered in State B to buy a new series of planes. The manufacturer bought the planes' engines from a company incorporated and with its principal place of business in State C. The manufacturer delivered the planes to the airline. After six months, all of the planes' engines failed.

The airline filed a complaint against the manufacturer and the company in a state court in State A for breach of contract, seeking \$500 million in damages. The manufacturer and the company were served with process, and the company immediately filed a notice of removal. The manufacturer filed a motion to remand.

Will the federal court likely grant the manufacturer's motion to remand?

- A. No, because due process requires that a federal court hear cases involving diverse parties.
- B. No, because the parties are diverse and the amount in controversy is \$500 million.
- C. Yes, because the airline is based in State A.
- D. Yes, because the manufacturer did not consent to removal.

Explanation:

A plaintiff can choose to file suit in state or federal court. However, a **defendant may remove** a suit filed in **state court to federal court** if the case falls within the federal court's **subject-matter jurisdiction**. This can arise from either:

- federal-question jurisdiction – when a claim arises under the U.S. Constitution, a treaty, or federal law (not seen here) *or*
- diversity jurisdiction – when the amount in controversy exceeds \$75,000 and the opposing parties are **citizens** of different states.

A defendant must **file a notice of removal** in federal court **within 30 days** after receipt of the initial complaint or service of the summons—whichever period is shorter.* The defendant must also obtain the **consent of all other defendants** to the removal. If these requirements are not met or some other **procedural error** occurs, the federal court should grant a motion to remand (ie, return) the entire case to state court.

Here, diversity jurisdiction exists because the airline from State A sued the manufacturer from State B and the company from State C for \$500 million in damages. The company timely filed a notice of removal after being served with process but failed to obtain the manufacturer's consent to the removal. As a result, removal is improper, and the federal court will likely grant the manufacturer's motion to remand **(Choice B)**.

*If a suit later becomes removable based on an amended pleading or motion, notice must be filed within 30 days after receipt of the amended pleading or motion. But if more than one year has passed since the suit was commenced and removal is based on diversity jurisdiction, then the suit can only be removed if the plaintiff acted in bad faith.

(Choice A) Due process does *not* require that federal courts hear cases involving diverse parties. State courts may also hear such cases unless Congress grants federal courts **exclusive jurisdiction** (not seen here).

(Choice C) The fact that the airline (plaintiff) is from State A does not provide a basis to remand the case. The home-court advantage (ie, forum-defendant) rule prohibits removal in a diversity case when a *defendant* is a citizen of the state in which the case was filed.

Educational objective:

A defendant must obtain the consent of all the other defendants to remove the suit from state to federal court.

References

- 28 U.S.C. § 1441 (removal requirements).
- 28 U.S.C. § 1446(b)(2)(A) (consent requirement for removal).

Requirements for removal to federal court

