

# Removal/Remand Issues From the Plaintiff's Perspective

By John F. Hawkins

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## A. Some introductory comments and general ranting and raving:

As frustrating as it may be for those lawyers inclined to remove every case served on one of their clients, plaintiffs really do get to decide whether to litigate and try their case in Federal or State Court, provided jurisdiction is proper. This deference to a plaintiff's selection of where to file his or her case is well entrenched in the law and has been for a very long time. Unfortunately, removal has become somewhat of a cottage industry in Mississippi for certain lawyers and their firms, or at least in certain Federal Court Districts and divisions, presumably because some defendants (or their lawyers) believe they gain some advantage by removing a case to Federal Court. While it can be maddening to deal with when you represent the party forced to engage in the extensive practice of filing the motion to remand, the accompanying memorandum brief and fight during depositions over what is or is not appropriate "remand related" discovery, it can also be satisfying to be the lawyer representing the plaintiff and finally get to argue that, in light of the clearly baseless removal and meritless opposition to your client's motion to remand, the *defendant* is forum shopping.

Many have complained about plaintiffs' lawyers joining hundreds or even thousands of individuals in one case in a state court venue that has a reputation, real or imaginary, of being "plaintiff friendly." This is especially true when no defendant can be found in that particular county and only a handful of the plaintiffs

have any connection to the venue in which the case has been filed. Some have argued and believe there have been abuses of the once liberal joinder and venue rules in Mississippi state court practice. It may well be that such purported abuses have fueled the fire for tort "reform" debates at the Capitol and have caused the Justices of the Mississippi Supreme Court to change the venue/joinder rules. It may also be that this once liberal practice of joining plaintiffs in "mass tort" cases has given justification to the removal lawyers (as I like to call them) to remove every case they defend.

It has been rumored that at some of the rather large defense firms removal is taught as an integral part of the defense of every case - indeed, there is the fear at some firms that to fail to remove a case in time might be deemed malpractice because, baseless or not, a defense lawyer can for the most part remove a case with impunity. Whether the case ultimately gets remanded or not, defense lawyers realize they can buy their defendant client the benefit of the months it takes to file the motion to remand, respond to that motion (with the requisite extensions of time granted on both sides of course), engage in remand-related discovery (whatever that is exactly) and then await the Federal Court Judge's ability to finally wade through all the other Motions to Remand to get an opportunity to eventually rule on the Motion to Remand in your case. Since the remand-related discovery must be accomplished before the case can even be fully briefed on the motion to remand, both sides typically end up briefing the same issues multiple times,

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including the much overused "letter brief," before the Court has everything before it to rule. It is not uncommon at all to see this process take over a year. Let me say that again - over a *year*. I am confident there are many lawyers who practiced before the adoption of the rules of civil procedure in this state who find it difficult to believe that any case should go on for more than several months without being tried and a judgment entered.

There is also another creature lurking out there - the Multi-District Litigation (MDL). Defendants served in certain cases with causes of action that are related to claims that are pending in an established MDL remove every case - knowing that most, if not all of them, will then be conditionally transferred (which practitioners have come to realize really means permanently transferred) to the MDL where the MDL Court will rule on the Motion to Remand. The practice of most Federal Court Judges in Mississippi is apparently to allow the case to be transferred without deciding the Remand issues before the transfer. As discussed below, I would submit that is not the best practice.

It is not a secret that delay in this business tends to help the defendant more often than the plaintiff in civil litigation. Moreover, anyone who has practiced long enough to litigate even one case from start to finish - whether settlement or final resolution occurs just before, during or after a trial knows that from the plaintiff's perspective, the name of the game is getting a trial date and forcing the matter to be resolved. A baseless removal with its attendant delays is in many cases a terrible thing for an injured person.

Not every lawyer contemplating filing a plaintiff's case strains mightily to avoid Federal Court, many of us representing plaintiffs in employment or civil rights cases for example, file the case where it should be filed. If it is a Title VII case for example, Federal Court is the appropriate jurisdiction. If the case is against a foreign manufacturer of a defective machine that injured your client and there is no viable in-state defendant, Federal Court is the proper place to file. Moreover, Federal Court arguably has some advantages.

Namely, you can typically get your case to trial quicker in my experience in Federal Court - provided of course you are not engaged in the Motion practice described above.

I must presume that with the recent opinions of the Mississippi Supreme Court and rules changes handed down by the Mississippi Supreme Court along with the very recent passage of more tort "reform" legislation, there will be fewer baseless removals. Perhaps now we can get back to the business of engaging in discovery and trying cases within a reasonable period of time.

### *B. The local seller issue:*

A Northern District Court Opinion dealing with this issue recently is enlightening. Judge Mills' recent opinion in the *Jerry W. Duffin v. Honeywell International, Inc., et al.* case states the following:

At any rate, the court does not agree that, under liberal notice pleading rules, the complaint is defective as it relates to the local retailers. To the contrary, the complaint clearly indicates that plaintiffs are proceeding under standard theories of strict products liability against the local retailers, alleging that they sold unreasonably dangerous and defective products and that, on this basis, they should be held liable under Mississippi law. Miss. Code Ann. § 11 - 1 -63 clearly provides for such retailer liability in products liability cases, as did Mississippi's common law products liability jurisprudence. A complaint does not need a great deal of specificity to convey that plaintiffs are seeking to hold retailers liable under a strict products liability theory, and the complaint in this case is sufficient to set forth plaintiffs' allegations in this regard. The court therefore sees no valid argument that the complaint is defective, much less so defective as to entitle the local retailers to

dismissal with prejudice on a finding of fraudulent joinder.

Additionally, Footnote 3 on pages 6 and 7 of Judge Mills' opinion specifically addresses a removing defendant's argument that an innocent seller should be deemed fraudulently joined based on the applicability of Miss. Code Ann. § 11-1-64. That footnote reads as follows:

The removal petition invokes the retailer liability provisions of § 11-1-64, which was passed by the legislature as part of the 2002 tort reform legislation. Section 11-1-64 generally provides retailers with a mechanism to seek dismissal from a products liability action for liability purposes, but, in an obvious attempt to defeat removal jurisdiction, the statute provides that any such dismissed retailers are to remain parties to the action for jurisdictional purposes. Miss. Code Ann. § 11-1-64(6) ... Missouri federal courts interpreting a nearly identical Missouri statute have found that statute sufficient to defeat federal removal jurisdiction, based partly on the fact that any dismissal thereunder is properly considered an involuntary dismissal which may not give rise to removal jurisdiction. *See, e. g. Pender v. Bell Asbestos Mines, Ltd.*, 46 F. Supp. 2d 937, 940 (E. D. Mo. 1999).

It is submitted that at the time of this writing, present, the argument that a local seller in-state defendant cannot provide the basis for State Court jurisdiction is misplaced.

### *C. The Smallwood/Ross Apparent Conflict*

The Fifth Circuit Court of Appeals' decision in *Smallwood v. Illinois Central R. R. Co.*, 342 F.3d 400, 405 (5th Cir. (Miss.) August 7, 2003) (quoting with approval the Third Circuit's holding in

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*Royer v. Snap-On Tools Corp.*, 913 F.2d 108, 113 (3d Cir. 1990), held that "where there are colorable claims or defenses asserted against or by diverse and non-diverse defendants alike, the court may not find that the non-diverse parties were fraudulently joined based on its view of the merits of those claims or defenses, instead, that is a merits determination which must be made by the state court." The decisions in *Smallwood* and *Royer* are based solidly upon the United States

Supreme Court's decision in *Chesapeake & Ohio Railway Co. v. Cockerell*, 232 U.S. 146, 34 S.Ct. 278, 58 L.Ed. 544 (1914).

Warnings against the dangers of improperly pre-trying cases in the fraudulent-joinder analysis can also be seen in other Fifth Circuit law. For example, even though the fraudulent joinder inquiry allows consideration of "summary-judgment like evidence" (i.e., the court can "pierce the pleadings" by considering depositions, affidavits, etc.), the inquiry is

not the same as a summary-judgment inquiry on the merits since, (1) the court must avoid "pretrying a case to determine removal jurisdiction," *Hart v. Buyer Corp.* 199 F.3d 239, 246-47 (5th Cir. 2000) and (2) "the court must also take into account all unchallenged factual allegations, including those alleged in the complaint, in the light most favorable to the plaintiff and resolve any contested issues of fact and legal ambiguities in the plaintiff's favor." *Id.* at 246.

District Court Judge Allen Pepper recently stated the following in a case involving the common defense of statute of limitations in the context of ruling on a Motion to Remand:

The "common claims or defenses" test applies to the instant case because a decision on the issue of the statute of limitations regarding the resident defendants necessarily involves a decision on the merits as to the non-resident defendants given the doctrine of respondeat superior. If the Court deems that the statute of limitations has run against the resident defendants, then the statute of limitations has also run against the non-resident defendants given that the claims against the latter are tied to those of the former. This the Court may not do because it would be pre-trying the case on the merits. Similarly, the "common claims or defenses" test precludes the defendants' other defenses to remand since they also go to the merits of the claims against all of the defendants of vicarious liability.

The facts and legal issues in this case speak to the apparent conflict between the decisions in *Ross* and *Smallwood* - i.e., *Ross* would seem to preclude remand in this case; whereas *Smallwood* would require remand. By "apparent," the Court means to say that the two decisions do not *directly* conflict since neither addresses the other. The decision in *Ross* did not technically trump *Smallwood* even though

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the decision in *Ross* was rendered three weeks after that in *Smallwood* since (1) *Ross* did not mention *Smallwood* and (2) subsequent decisions in *Collins v. American Home Products Corp.*, 343 F.3d 765 (5th Cir. (Miss.) September 9, 2003) and *McKee v. Kansas City Southern Railway Co.*, 2004 WL 103439 (5th Cir. 2004) have cited *Smallwood* with approval and neither mentioned *Ross*.

Notwithstanding the apparent conflict, this Court finds that the "common claims defenses" analysis of *Smallwood* and its progeny is binding in the instant case and warrants remand. The decision in *Smallwood* is based almost exclusively upon *Chesapeake & Ohio Railway Co. v. Cockerell*, 232 U. S. 146, 34 S.Ct. 278, 58 L.Ed. 544 (1914), a decision by the United States Supreme Court. Thus *Cockerell* remains the law of the land until the Court decides otherwise. The Court further distinguishes the outcome in *Ross* from that in the instant case by repeating that the Fifth Circuit Court of Appeals has cited *Smallwood* with approval on at least two occasions (in *Collins* and *McKee*) subsequent to the *Ross* decision without mentioning *Ross*.

*Smallwood* dictates that when defenses common to both in-state and foreign Defendants are raised, those defenses cannot provide a basis for determining that the in-state defendant has been fraudulently joined. The Fifth Circuit is expected to clarify these issues soon.

### D. Removal Late in the Game and the multiple removal problem

1. Removal by newly added defendant after case has been on file more than one year

28 U. S. C. § 1446(b) provides in part:

If the case stated by the initial pleading is not removable, a notice

of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may be ascertained if the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

28 U. S. C. § 1446(b). The language "except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action" was added by Congress on November 19, 1998. The Commentary on 1998 Revision of Section 1446 by David D. Siegel, which appears in our printout of the United States Code Annotated to this section provides as follows, in pertinent part.

The mission of the second paragraph is to recognize that the action as originally brought may not be removable, but that it may become so through some event occurring afterwards. One example of this is in a potential diversity of citizenship case in which one of the originally joined defendants, S (for spoiler) has the same citizenship as one of the plaintiffs, precluding removal, with the drop of a party at a later point through the voluntary acts of the plaintiff or a mutual settlement between the plaintiff and S, making the case right for removal. The second paragraph of subdivision (b) permits the removal to be made now. It starts a new 30-day period from the time the remaining defendant received the paper manifesting that F has been dropped.

That was of course the case before the amendment, and it remains so after it. What the amendment does, however, is put a 1-year outer limit on the removal - measure from the action's com-

mencement - is the purported removal basis is the diversity of citizenship of the party.

That will not pose any special problems in those cases. It may be expected that the line up of the parties in the state court action has become a permanent one by the time a year has gone by. But that will not always be so, and the result in a given case is made to depend on the procedural variations - and perhaps the procedural eccentricities - of the particular states practice. The amendment may sometimes give too much control to the state court plaintiff who wants to resist a removal to the federal court at all costs. It can invite tactical chicanery.

A plaintiff with the motive of defeating removal, for example, may be able to join as a defendant, in a case which there is genuine diversity between the plaintiff and the other defendant, someone of non-diverse citizenship whom the plaintiff does not really intend to sue but who is arguably liable on the claim and hence properly joined under state law. The plaintiff can then just wait a year and drop that party, polishing the action to just the point desired and at the same time dissolving the threat of federal jurisdiction.

The one-year cut off therefore has an anti-diversity ring to it.

Congress acknowledged this because it a "modest curtailment."

The defendants with the diverse citizenship who want to remove, may not be entirely helpless. If they can produce evidence to convince the court that the non-diverse defendant can in no way be liable under the applicable substantive law as applied to the facts as

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pleaded, they might convince the court to apply the so-called "fraudulent joinder" doctrine

....

... If S settles the case, and certainly if S settles it for anything substantial, it's not likely to be a situation in which the claim against S can be shown frivolous enough to invoke the fraudulent joinder doctrine.

David D. Seigel, Commentary on 1998 Revision of Section 1446.

The Fifth Circuit in 1992 recognized that a diverse defendant's removal of a case to federal court after the dismissal of a non-diverse defendant qualified as a "procedural defect." *Barnes v. Westinghouse Electric Corporation*, 962 F. 2d 513, 516 (5th Circuit 1992). In *Barnes*, Plaintiff filed his Sixth Amended Original Petition, which named for the first time completely diverse defendants, on December 16, 1988. *Id.* at 515. Within thirty days, Westinghouse, which had been a defendant since 1985, filed a petition for removal. *Id.* The Fifth Circuit recognized that "[n]one of the parties dispute that Westinghouse removed the case more than one year after the commencement of the action." *Id.* at 515. The Fifth Circuit affirmed the lower court's holding that the removal procedures set forth at 28 U. S. C. §§ 1446(b) and 1447(c) were not jurisdictional, so that the plaintiff could waive his right to object removal after the case had been pending for over a year in state court by failing to timely file his motion for rehearing. *Id.* at 516. Cases where a settling defendant is dismissed are distinguishable from cases where a defendant is later added.

The decisions from the Fifth Circuit indicate that the Court will construe this statute as narrowly as possible in order to defeat remand. For example, in 2003, the Fifth Circuit, in a Rezulin case recognized an equitable exception to U.S.C. § 1446(b). *Tedford v. Warner-Lambert, Co.*, 327 F. 3d 423, 434 (5th Cir. 2003). In *Tedford*, the Fifth Circuit found that the plaintiff had engaged in "forum manipulation," by a course of conduct, including signing and post-dating a Notice of Nonsuit before the one-year anniversary of the commencement of the action, and

not notifying the diverse defendant of the non-suit until after the expiration of the anniversary. *Id.* at 425. The test appears to be whether the plaintiff engaged in forum manipulation, but this case leaves open to the district court's discretion whether a later-added defendant should receive additional time to remove a case pursuant to an equitable exception.

The United States District Court for the Northern District of Mississippi has held that an amended complaint adding additional plaintiffs revised the 30-day period, and even if this is not the case, the district court refused to "apply the one-year rule in a rigid mechanical manner." *Hill v. Ascent Assurance, Inc.*, 205 F. 2d 606, 615 (N. D. Miss. 2002). The Court was able to reach this conclusion by holding that the action was "commenced" when the additional plaintiffs were added, and the Court severed the additional plaintiff's suits from the original plaintiff's case.

The United States District Court for the Middle District of Alabama held in 2001 that a notice of removal was not timely filed when Ford, which was added as a defendant a year after the commencement of the action, removed the case. *Sasser v. Ford Motor Company*, 126 F. 2d 1333, 1334 (M. D. Ala.). The non-diverse defendants were dismissed after the diverse defendant was added as a party. *Id.* The Alabama District Court framed the issues as follows:

As the court sees it, the parties' contentions initially present a question of statutory construction. If the words in section 1446(b) - "a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action" - mean within one year of the commencement of the initial action, that is, the filing of the original complaint, then Sasser prevails, because this action was commenced on July 31, 1998, but the removal notice was not filed until May 17, 2000. However, if the words mean within one year of the commencement of the action as to Ford, then Ford wins, assuming the

commencement date of the action is when Ford was added as a party on October 12, 1999.

*Id.* at 1335. The court held in a footnote that the appropriate question is whether or not there is relation back under the appropriate state rules of civil procedure:

Some courts have used the commencement of the action as to a party to be either the date of the amendment adding the party or, if there is a relation back, the date of the original filing of the lawsuit. Thus these courts look to whether there is a relation back under the appropriate state rules of civil procedure.

*Id.* at 1335, n.4.

The Alabama court ultimately held that the term "commencement of action," refers to the commencement of the action initially and not as to any later addition of a particular party or claim. In reaching this conclusion, the court reasoned as follows:

Second, if Congress had intended for § 1446(b) to be claim or party specific, it could have worded the provision to make it so. The provision could have read that "a case may not be removed by a party on the basis of jurisdiction conferred by § 1332 of this title more than 1 year after commencement of the action against that party." Because Congress did not do this, the courts should not reword the statute to make it read this way.

*Id.* at 1336.

### 2. The multiple Removal Problem

Removal is to be construed restrictively so as to limit federal subject matter jurisdiction. *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir.1988) (citations omitted). Further, the removing defendant bears the burden of demonstrating that removal was proper and that federal subject matter jurisdiction exists. *Id.* Additionally, any doubts concerning the

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propriety of removal should be resolved in favor of remand. *York v. Horizon Fed. Sav. & Loan Ass'n*, 712F.Supp. 85, 87 (E.D.La.1989)

Plaintiffs sometimes urge the Court to expeditiously decide a remand motion pursuant to Uniform Local Rule 7.2(g), where the removing Defendant's removal tactic is clearly intended to harass, frustrate, delay and cause unnecessary expense to Plaintiffs. It is not uncommon for a defendant to remove a case more than once and sometimes shortly before trial.

One example is when a defendant believes an Order has been entered that provides the basis for removal that did not previously exist. In *Green*, the Fifth Circuit Court of Appeals held that under "very narrow circumstances" an opinion from an unrelated case may constitute an "order" for purposes of 1446(b) removal in a case involving the same defendants, and similar factual situation and legal issue. *Green*, at 268. In reaching its decision, the *Green* Court considered the removing party's argument that another opinion by the Fifth Circuit Court of Appeals newly established removability. The argument for the subsequent removal in *Green* was that the Fifth Circuit had decided the case of *Sanchez v. Liggett & Myers, Inc.* 187 F.3d 486 (5th Cir. 1999), after the first remand, holding that a Texas statute barred the action brought against the seller of cigarettes and because the claim against the resident defendant was statutorily barred, complete diversity did not exist. Accordingly, the Fifth Circuit noted that the diverse defendants in both *Sanchez* and *Green* were the same and both "involved a similar factual situation and legal conclusion (that Tex. Civ. Prac. & Rem. Code 82.004 bars most products liability actions against manufacturers or sellers of cigarettes)". *Green* at 268.

In reaching its conclusion in *Green*, the Fifth Circuit looked to the Third Circuit case of *Doe v. American Red Cross*, 14 F.3d 196 (3d Cir. 1993). In *Doe*, the court held that subsequent removal of the action was appropriate because while the case was pending, the United Supreme Court had determined in a separate but similar case that the American Red Cross was conferred federal jurisdiction by its

charter. *Green* at 267, citing *American National Red Cross v. S.G.*, 505 U.S. 247, 112 S.Ct. 2465, 120 L.Ed.2d 201(1992).

In *Green* the "order or other paper" establishing removability was a decision by the same Court of Appeals finding a statutory bar to claims brought against the non-diverse defendants. In *Doe*, the "order or other paper" was a U.S. Supreme Court ruling finding that all suits brought against the defendant must be brought in Federal Court.

There is an extensive line of cases finding that an opinion from an unrelated case does not constitute a § 1446(b) "order or other paper". See, eg., *Morsani v. Major League Baseball*, 79 F.Supp.2d 1331, 1333-34 (M.D.Fl.1999) (decision in an unrelated case is not an "order or other paper" under §§ 1446(b); "plain language of the statute ... implies the occurrence of an event within the proceeding itself"); *Metropolitan Dade County v. TCI TKR of South Florida*, 936 F.Supp. 958, 959 (S.D.Fl.1996) (Federal Communications Commission opinion not "other paper" under §§ 1446(b)); *Lozano v. GPE Controls*, 859 F.Supp. 1036, 1038 (S.D.Tex.1994) judicial opinion in an unrelated case is not "other paper" under §§ 1446(b)); *Kocaj v. Chrysler Corp.*, 794 F.Supp. 234, 236 (E.D.Mich.1992) (opinion in unrelated case is not "other paper" under §§ 1446(b); "[statutory] language plainly refers to items served or otherwise given to a defendant in a state court case"); *Holiday v. Travelers Ins. Co.*, 666 F.Supp. 1286, 1289 (W.D.Ark.1987) (recent Supreme Court decisions not "other paper" under §§ 1446(b)); *Hollenbeck v. Burroughs Corp.*, 664 F.Supp. 280, 281 (E.D.Mich.1987) (decision in unrelated case is not other paper under §§ 1446(b), as the "other paper" language focuses on voluntary actions of the plaintiff, not factors beyond the plaintiff's control); *Johansen v. Employee Benefit Claims, Inc.*, 668 F.Supp. 1294, 1296-97 (D.Minn.1987) (based on the statutory language, "other paper" should be interpreted to refer to documents generated within the state court litigation, and not an extraneous decision in another case); *Gruner v. Blakeman*, 517 F.Supp. 357, 360-61 (D.Conn.1981) (subsequent decision in a related case did not consti-

tute "order or other paper"); *Wright, Miller and Cooper*, 14C *Federal Practice and Procedure* §§ 3732, p. 310 (West 1998) ("the publication of opinions by other courts dealing with subjects that potentially could affect a state court suit's removability or documents not generated as a result of state court litigation are not recognized as 'other paper' sources for purposes of starting a new thirty-day period under Section 1446(b)"); "Other paper" within the meaning of §§ 1446(b) refers to papers that are generated within the specific state proceeding which has been removed to federal court. *Accord Nolan v. Boeing Co.*, 715 F.Supp. 152, 155 (E.D.La.1989) ("other paper" includes only new facts in the specific case that is removed); *Johansen v. Employee Benefit Claims, Inc.*, 668 F.Supp. 1294, 1296 (D.Minn.1987) ("other paper" refers solely to documents generated in the state court litigation); *Holiday v. Travelers Ins. Co. Inc.*, 666 F.Supp. 1286 (W.D.Ark.1987) ("other paper" covers papers or actions in or a part of the proceedings in the case in which removal is sought).

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*E. MDL Transfers and why the Removal/Remand decision should be made here:*

This one is pretty obvious from the plaintiffs perspective - a lawyer filing a Motion to Remand believes the Motion to Remand has merit. If we prevail on our Motion to Remand, the case gets remanded instead of being transferred to the MDL - otherwise affectionately known as the "black hole" from which a case never returns. In all seriousness, it is respectfully submitted that our Mississippi Federal Judges should be the Judges making decisions as to whether, in the context of a fraudulent joinder analysis for example, Mississippi law recognizes at least the possibility the plaintiff has stated a claim against the in-state resident defendant the removing party claims the plaintiff has fraudulently joined. Moreover, there are cases where more delay and expense - which is what the MDL causes in many cases - is not only inherently bad, but is dangerous for a particular party.

For example, I filed a single plaintiff pharmaceutical case that *clearly* should have been remanded and would have if the local Federal Court Judge had consid-

ered the Motion. The resident defendant was not fraudulently joined - rather, this was a case where the local drug representative made direct representations about the safety and efficacy of the drug to one of the plaintiffs, who interestingly enough is a local physician. The experts who reviewed the matter agreed that the claim that the drug had contributed to the health problems of the decedent was legitimate. The doctor-plaintiff had relied on the representations of the drug representative, a fact situation that at least one Mississippi Federal Judge (Judge Barbour) ruled to be sufficient to state a claim against the in-state drug representative. The case should have been remanded and we requested an emergency hearing. Instead, the matter was conditionally transferred to the MDL. It was gone. Over a year later, the MDL Magistrate ruled that remand was proper. The MDL District Judge overruled the Magistrate and kept the case in the MDL. This was truly a bad development for the Mississippi family of the decedent.

It is respectfully submitted that Mississippi Federal Judges should rule on Motions to Remand before allowing cases to be transferred. ■

## 2005 Calendar

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