

Fighting back when big-box stores remove your state-court lawsuit to federal court

They want to try these cases without any meaningful voir dire and where you need a unanimous jury verdict

By Mauro Fiore

Big-box stores have become a staple of modern consumer culture, offering a wide range of products and services under one roof. These retail giants attract millions of customers each year, but with their size and reach comes a slew of legal issues. One such issue is the removal of state-court lawsuits to federal court, a process that can have significant implications for all parties involved.

When a lawsuit is filed in a state court against a big-box store, the store may have the option to remove the case to federal court. This option is available under the federal removal statute, which allows defendants to transfer cases from state to federal court under certain circumstances. One common reason for removal is diversity jurisdiction, which exists when the parties in the case are from different states and the amount in controversy exceeds a certain threshold.

Removing a case to federal court can have several advantages for big-box stores. Federal courts are often seen as more predictable and consistent in their rulings, which can be beneficial for defendants facing complex legal issues. Additionally, federal courts may have more resources and expertise to handle large and complex cases, making the litigation process more efficient.



State of citizenship for corporate defendants like Walmart

In the context of federal jurisdiction, the citizenship of a corporation, including a big-box store operating in multiple states, is determined by the state in which it is incorporated. This principle is known as the "nerve center" test, which considers the corporation's principal place of business or headquarters as its state of citizenship for diversity jurisdiction purposes.

Even if a big-box store has locations and operations in multiple states, its citizenship for federal jurisdiction is based on its state of incorporation or its principal place of business. This rule ensures that corporations cannot manipulate their citizenship to gain access to federal courts or avoid state court jurisdiction by simply operating in multiple states.

By designating the state of incorporation or principal place of business as the corporation's citizenship, federal courts can determine diversity jurisdiction based on the parties' actual connections to different states and ensure fair and impartial adjudication of legal disputes across state boundaries.

Therefore, even if a big-box store operates in all states, it is considered a citizen of one state for purposes of federal jurisdiction to maintain consistency and fairness in the application of diversity jurisdiction rules.

Plaintiffs may oppose the removal, arguing that the case should remain in state court where they believe they have a better chance of success. Furthermore, the removal process can add time and costs to the litigation, as both parties must comply with federal court procedures and rules. The removal of state-court lawsuits to federal court is a complex legal maneuver that can have significant implications in favor of big-box stores and other defendants.

Ways for plaintiffs to defeat removal

To defeat a removal motion or prevent it from even being attempted in one of your state-court lawsuits, for example, a slip-and-fall lawsuit against Walmart or Costco, there are several

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strategies that can be employed. Here are some key steps that can be taken to challenge and potentially prevent the removal.

If the store has removed the case to federal court, you can file a motion to remand the case to state court. This motion challenges the removal and asks the federal court to send the case back to the state court where it was originally filed.

Challenge diversity jurisdiction

One common reason for removing a case to federal court is diversity jurisdiction, which exists when the parties are from different states and the amount in controversy exceeds a certain threshold. To challenge diversity jurisdiction, you can argue that the parties are not diverse or that the amount in controversy does not meet the required threshold of $75K. But be careful here. Once you are served with removal papers, the defense lawyers will routinely call you up and offer an easy way out. They will suggest that, if you stipulate that the damages are under $75K, they will withdraw their removal petition and agree to keep the case in state court. First off, let's hope you are not litigating too many cases worth less than $75K. But if you are, don't be tempted by this offer. You will cap your damages in state court to less than $75k and the defense will play hardball with you knowing that their client has very little exposure. This is not an advisable route to take; don't be lazy and fall for this easy way out.

Assert lack of federal question

Another basis for removal to federal court is the presence of a federal question in the case. If the defendant removed based on a federal question, but there is no federal law or issue involved in the case – such as a slip-and-fall lawsuit against Walmart – you can argue that the case does not belong in federal court. Almost always in these situations there is no federal law or question involved. But the existence of diversity will still allow it to be removed unless that is defeated or prevented.

Challenge procedural deficiencies

If the defendant has not followed proper procedures in removing the case to federal court, such as missing deadlines or failing to meet requirements, you can challenge the removal on procedural grounds.

Naming a store manager

Diversity jurisdiction does not exist when the plaintiff and one of the defendants in the case are residents of the same state. So, by naming the store manager, you may be able to defeat diversity, provided the federal court does not conclude that naming the manager was a sham.

For example, if the manager is named as a defendant in an individual capacity and is a citizen of the same state as the plaintiff, it will defeat diversity and should prevent the case from being successfully removed to federal court based on diversity jurisdiction. If you are suing for premises liability, make sure you allege that the manager who you are naming in their individual capacity negligently "managed and controlled the premises." These types of personal individual negligence allegations against the personally named manager will almost always prevent the removal of the state court case to federal court. It is a very effective weapon, provided you have a good-faith basis for naming the manager.

Finding out the name or names of the correct managers to name from your involved Walmart, Target, Home Depot or other stores is sometimes difficult, but if you use your undercover skills, you can usually find the names. It's important to note that the court's decision on removal to federal court is a legal process governed by specific rules and criteria. While naming the manager of a big-box store in the lawsuit can be a factor to consider, it may not be the court's sole determining factor in defeating federal removal.

These defendants know that we generally don't like federal courts. They want us to be uncomfortable. They want to try these cases without any meaningful voir dire and where the jury must decide the case with a unanimous verdict. It is best to try to prevent the removal by filing the case in state court in a way that makes successful removal unlikely for the defendant. Naming store managers is one method that has served my cases well.

Now, go out and try some cases!


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Mauro Fiore grew up in Southern California and graduated from law school in 1998. Since then, he has dedicated himself to representing regular people seeking justice against insurance companies, large corporations and public entities. He has tried cases in both state and federal courts, including wrongful death, premises liability and civil rights trials. He enjoys sharing his knowledge with other lawyers through speaking engagements, writing articles and chapters in practice guides such as the chapter on premises liability in Nick Rowley's book, "Running with the Bulls." He, along with eight partners and associates, practice throughout California and also in Seattle, Washington.

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